In The Matter Of:

The State Of Texas v.
The American Tobacco Company, et al

Richard W. Mizerski
July 14, 1997

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION
C.A. NO. 5:96CV91
THE STATE OF TEXAS
VS
THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP MORRIS, INC.; LIGGETT GROUP, INC.; LORILLARD TOBACCO COMPANY, INC.; UNITED STATES TOBACCO COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL FOR TOBACCO RESEARCH - USA, INC. (Successor to Tobacco Institute Research Committee); and THE TOBACCO INSTITUTE, INC.
VIDEOTAPED
ORAL DEPOSITION
OF
RICHARD W. MIZERSKI
July 14, 1997

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ANSWERS AND DEPOSITION OF RICHARD W. MIZERSKI, produced as a witness at the instance of the Plaintiff, taken in the above-styled and -numbered cause on the 14th day of July, 1997, before Ronald R. Cope, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter and Certified Realtime Reporter, at the offices of Jones, Day, Reavis & Pogue, located at Metropolitan Square, 1450 G Street N.W., in the City of Washington, D.C., in accordance with the Federal Rules of Civil Procedure and the agreements hereinafter set forth.

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[1] PROCEEDINGS

[2] THE REPORTER: Do you wish to [3] place any agreements on the record?

[4] MR. ANGELOVICH: The deposition [5] is being taken pursuant to the plan in the Eastern [6] District of Texas.

[7] RICHARD W. MIZERSKI,

[8] the witness hereinbefore named, being of lawful [9] age and being first duly cautioned and sworn in [10] the above cause, testified on his oath as follows:

[11] EXAMINATION

[12] BY MR. ANGELOVICH:

[13] Q: Good morning, Dr. Mizerski. My name [14] is Jeff Angelovich. I'm a lawyer with the Nix [15] firm in Daingerfield, Texas. I'm here today on [16] behalf of the State of Texas representing them in [17] their lawsuit against various entities in the [18] tobacco industry. Do you understand that?

[19] A: Yes, I do.

[20] Q: Before we get started, I want to just [21] take a quick second and - just to make one matter [22] clear. I want to read a portion of the Eastern [23] District Civil Expense and Delay Reduction Plan [24] regarding depositions. In Article 6, subparagraph [25] 6, states that attorneys are prohibited from

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[1] instructing the deponent not to answer a question [2] or how to answer a question except to assert a [3] recognized privilege. Other objections shall be [4] made at trial.

[5] Because this is an expert deposition, [6] I would anticipate that there aren't going to be [7] any objections. And I just want to make sure that [8] the rule's read into the record so everybody is [9] clear on that.

[10] Would you please state your full name [11] for the record.

[12] A: Richard - excuse me. Richard William [13] Mizerski.

[14] Q: Dr. Mizerski, you've given, I know, [15] several depositions, so you understand pretty much [16] what's going on in the deposition?

[17] A: That's correct.

[18] Q: The only things that I ask, I want to [19] make sure that you understand my questions before [20] you answer it. Can we have that agreement?

[21] A: Sure. Of course.

[22] Q: Okay. And if you don't -

[23] MR. McDERMOTT: What agreement?

[24] MR. ANGELOVICH: That he [25] understands my question and he not answer until

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[1] you understand my question or unless you [2] understand my question.

[3] A: If I don't understand your question, I [4] will tell you that I don't understand, could you [5] repeat it, could you put it another way because [6] it's too complex or whatever it might be. But [7] certainly I don't want to answer anything that we [8] don't both agree was the question.

[9] Q: (By Mr. Angelovich) Okay. And I [10] appreciate that, because, of course, I don't want [11] to get to the end of the deposition and have [12] somebody say, "I didn't understand your [13] question." So we'll have that agreement.

[14] Also would you please wait until I [15] finish asking a question before you start [16] answering? Can we have that agreement?

[17] A: Yes.

[18] Q: I will grant you the same courtesy, I [19] will wait until you've finished with your answer [20] before I start going again.

[21] A: Thank you.

[22] Q: Also, please feel free to take a break [23] whenever you'd like. The only exception that I [24] generally have to that is in between a question [25] and an answer. Any time after an answer, feel

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[1] freely to take a break. But if you feel it's [2] absolutely necessary, you can break that rule.

[3] MR. ANGELOVICH: Could you mark [4] this for me, please.

[5] (Deposition Exhibit 1 was marked.)

[7] Q: (By Mr. Angelovich) Dr. Mizerski, I'm [8] going to hand you what's been marked as Deposition [9] Exhibit 1. Have you seen that document before?

[10] A: I'm not sure.

[11] Q: Well, Doctor, it is the Amended Notice [12] for your oral deposition. Although the day of the [13] week is stated wrong in there, the date is June [14] 14, '97. I want to make sure that you are here [15] pursuant to that deposition notice.

[16] A: Yes. That's correct.

[17] MR. ANGELOVICH: Go ahead and [18] mark both of these.

[19] (Deposition Exhibits 2 and 3 were marked.)

[21] Q: (By Mr. Angelovich) Dr. Mizerski, I'm [22] going to hand you Deposition Exhibit 2, which is [23] the amended order regarding expert depositions in [24] this case. I really don't have any questions [25] regarding that document for you. It's merely

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[1] being attached as a companion to your disclosure [2] statement, [3] I'm going to hand you Deposition [4] Exhibit Number 3. Do you recognize that document?

[5] A: Yes, I do.

[6] Q: What is it?

[7] A: I just recognize the document

[8] Q: Okay. Do you know what the document [9] is?

[10] A: Yes. This is material that I have [11] provided and may presumably comment on.

[12] Q: Is this your disclosure pursuant to [13] the amended case management order, or at least a [14] portion of it? Your expert disclosure stating [15] your opinions and the documents that you rely upon [16] for those opinions.

[17] A: I'm sorry. There was more to it. [18] Yes, it is.

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[19] Q: Okay. And doctor, in that disclosure [20] you're required to provide, pursuant to the plan, [21] a list of all opinions that you intend to offer at [22] trial in this case. Are those contained within [23] that document?

[24] A: Yes, they are.

[25] Q: Okay. And those are the only opinions

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[1] that you intend to offer at the trial of this [2] case?

[3] A: That is correct. I believe in the [4] final paragraph there is - yes. I'm looking for [5] a paragraph that talks about the other experts.

[6] Q: I think it is the final paragraph if [7] you want to look at that again.

[8] A: Yes. To the extent other experts -

[9] Q: That would be in your capacity as a [10] rebuttal witness -

[11] A: Yes.

[12] Q: - is that correct? [13] Okay. As far as you know, have you [14] provided us copies of all documents that you [15] intend to rely upon or that you do rely upon in [16] forming your opinions or intend to offer at trial?

[17] A: Yes.

[18] Q: Okay. And those also would be listed [19] on your disclosure and contained within the ten [20] boxes of documents that I got at my office last [21] week?

[22] A: That is correct.

[23] Q: All right. You have provided a copy [24] of your CV, your curriculum vitae?

[25] A: That's correct.

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[1] Q: And does this contain - does your CV [2] contain a list of all articles, books, reports, or [3] other - or similar materials that you've either [4] written in whole or part?

[5] A: That have been published or published [6] in some form, yes.

[7] Q: And you've provided us with a list of [8] all cases in which you've testified either at [9] trial or in deposition; is that correct?

[10] A: Anything dealing with tobacco.

[11] Q: Okay. Well, I'm not sure the rule is [12] that specific relating to tobacco. I think the [13] rule reads that it is all cases since 1994 in [14] which the expert has testified either in [15] deposition or at trial.

[16] A: You have that.

[17] Q: I have that?

[18] A: Yes.

[19] Q: Just briefly can you please tell me [20] the chronology of events that lead you being [21] retained as an expert in the Texas tobacco case [22] and kind of how that occurred, when it occurred, [23] and who were the people that contacted you?

[24] A: To the best of my recollection, I [25] believe I was contacted by Geoff Beach from Jones,

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[1] Day, probably sometime in June of '97.

[2] Q: June of this year?

[3] A: Yes. It may have been May. May or [4] June of '97.

[5] Q: Did he contact you at your office in [6] Australia?

[7] A: Yes. My home office.

[8] Q: Have you - had you previously been [9] contacted by Mr. Beach or anybody at this office [10] regarding the Mississippi or Florida tobacco [11] cases?

[12] A: Yes.

[13] Q: Okay. And, Doctor, I'm interested in [14] saving time in this deposition. I'm sure you are [15] too. I've looked over your Mississippi [16] disclosure, your expert statement, your Florida [17] expert statement, the depositions in those cases. [18] And other than some things that we're going to [19] talk about a little bit later, is it fair to state [20] that your opinions are fairly similar across the [21] board regarding the effects of marketing and [22] advertising?

[23] A: Well, they would be the same if the [24] question - same answers to the same questions -

[25] Q: Okay.

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[1] A: - no matter whether it's a case or [2] whether I'm talking in front of a classroom.

[3] Q: Okay. Then I'm not going to waste [4] time rehashing all of that stuff.

[5] Other than Mississippi and Florida, [6] which states - strike that.

[7] Other than the Mississippi and Florida [8] cases and the Texas case, have you involved in any [9] other tobacco cases that have either been brought [10] by the states' attorney general or on behalf of [11] the state, similar to the Texas case?

[12] A: Perhaps a gray area - I think an [13] attorney would be better able to interpret [14] that - but the Mangini case in California.

[15] Q: Any others?

[16] A: I don't believe there's any. There's [17] another case called Engel in Florida, but I don't [18] remember that being associated with the state. I [19] think it's a private action.

[20] Q: Do you understand that approximately [21] 38 to 40 states have brought suits similar to the [22] state - to the suit brought by the State of [23] Texas? Are you -

[24] A: Yes.

[25] Q: - aware of that fact?

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[1] Have you been - have you discussed, [2] either with your lawyers or somebody at RJR, the [3] possibility of being retained as an expert in any [4] or all of those cases?

[5] A: Well, nobody certainly said, "Would [6] you like to be an expert witness in the rest of [7] these cases?" Nothing like that. As a case comes [8] up, they may or may not ask I participate.

[9] Q: You haven't agreed to do that in any [10] other states other than Mississippi, Florida, [11] Texas, the Mangini case, the California case, the [12] Engel case?

[13] A: I don't remember any others -

[14] Q: Okay.

[15] A: - at this point.

[16] Q: Of the cases that I just mentioned, in [17] which of those have you provided deposition [18] testimony? And I know Mississippi and Florida so [19] we don't need to address those. Have you given [20] deposition testimony in the Mangini case?

[21] A: Yes, I did.

[22] Q: What was the date of that? And [23] approximation is fine. I don't need an exact [24] date.

[25] A: I believe it was the 10th and 11th of

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[1] July.

[2] Q: Where was that deposition taken?

[3] A: The deposition was taken in [4] Washington, D.C.

[5] Q: The California case, have you provided [6] deposition testimony in that case?

[7] A: Just Mangini.

[8] Q: Okay. So that's the only other one [9] other than Mississippi, Florida, and now Texas?

[10] A: I believe so.

[11] Q: Have you been retained as an expert in [12] any of the class-action litigation that's been [13] filed, the Cippilone case, or where a class group [14] of smokers have brought suit against the tobacco [15] industry?

[16] A: That would be the Engel case.

[17] Q: That is the Engel case?

[18] A: Yes.

[19] Q: Okay. You haven't been involved in [20] the Cippilone case?

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[21] A: No.

[22] Q: Have you had any involvement or have [23] you been retained as an expert in any individual [24] smoker lawsuits wherein an individual smoker has [25] brought suit against one or more manufacturers of

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[1] the tobacco products?

[2] A: No.

[3] Q: Either as - strike that. [4] I understand from reading I think the [5] Mississippi deposition that you were hired to do a [6] little work before the FTC on behalf of RJR; is [7] that correct?

[8] A: That is correct.

[9] Q: And I think in that deposition you [10] discussed that pretty much at length, so I don't [11] want to go into that. But other than that [12] proceeding in which you gave an oral presentation, [13] have you been hired by either RJR or any of the [14] tobacco manufacturers to represent them in any [15] other administrative proceedings?

[16] A: No.

[17] Q: And I don't want to limit that [18] question to the United States. Let me state at [19] this time that if I refer to cases or [20] administrative proceedings, that I'm not limiting [21] myself - I don't want to limit the question to [22] the United States.

[23] A: If that's the case, then I am working [24] with Philip Morris, and it's not clear what the [25] issues will be, in Australia.

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[1] Q: Is that before the administrative [2] board?

[3] A: I'm not sure. They have a different [4] court system and we're simply in the process right [5] now of talking with attorneys about how people [6] make decisions, the impact of advertising.

[7] Q: Are they retaining you for the same [8] expertise that you're being retained in these [9] tobacco cases?

[10] A: You would have to ask them.

[11] Q: Okay. Do you feel like you're doing [12] the same type of work as you're doing in these [13] tobacco cases?

[14] A: Well, there are similarities, but of [15] course I'm looking much more at Australia as well [16] as the international perspective.

[17] Q: Has smoking advertising, tobacco [18] advertising, been banned in Australia?

[19] A: Almost all of it has, yes.

[20] Q: Okay. And so are you working with [21] Philip Morris regarding either repealing that ban, [22] having the ban changed?

[23] A: As I had noted, at this point we're in [24] preliminary discussions and I've had meetings just [25] simply talking about consumer decision making, how

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[1] people making decisions about that, the literature [2] that's involved.

[3] Q: Tell me about your preliminary [4] meetings, then. I feel like there's a little bit [5] that I'm missing. What is your understanding as [6] to why you have been retained?

[7] A: As I said, I've at this point [8] discussed with these people how people make [9] decisions. I've talked with a number of [10] attorneys. I've shared my expertise in the area, [11] what kind of literature is available, what kind of [12] people do research in the area. And beyond that, [13] I'm really not ready to comment, because it simply [14] is the kind of thing we will be talking about [15] today, I'm sure.

[16] Q: How often is it that you're retained [17] by a company you don't really understand what the [18] goal at the end of the project is?

[19] MR. McDERMOTT: Object to the [20] form of the question. Argumentative.

[21] MR. ANGELOVICH: Okay. Now you [22] can't - you just can't object under the Eastern [23] District rules. That's why I read the provision [24] at the start of the deposition. There are [25] absolutely no objections that can be made other

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[1] than a privilege because this man is an expert.

[2] MR. McDERMOTT: Including form of [3] the question?

[4] MR. ANGELOVICH: That's exactly [5] right. I will hand you the rule if you like. You [6] can take a look at it. And I'm just trying to be [7] straight up front with you. I'm not trying to get [8] you to waive your objections or anything like [9] that. But the point is you're given six hours in [10] the Eastern District and it can't be six hours [11] filled up with objections.

[12] So you have my word that all of your [13] objections, other than privilege, are going to be [14] reserved for trial and are not waived by not [15] making them at this time. I would appreciate it [16] if you would be agreeable with that and I think we [17] can get this over with.

[18] MR. McDERMOTT: All right. [19] Proceed.

[20] MR. ANGELOVICH: All right.

[21] THE WITNESS: Could you repeat [22] the question?

[23] MR. ANGELOVICH: Can you read the [24] question back, please.

[25] (The reporter read back the requested text.)

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[1] A: Most of the time.

[2] Q: (By Mr. Angelovich) Okay. And do [3] you - and what type of industries do you do most [4] of your consulting with, or can you even [5] categorize that?

[6] A: Sure. No, I've done quite a bit of [7] work with consumer packaged goods dealing with [8] confections, frozen novelties, automotive, [9] telephony, interactive technologies.

[10] Q: Tobacco?

[11] A: Tobacco. Gambling. Lottery.

[12] Q: One thing that I want to try to get [13] clear, I understand that the work that you've [14] done - a lot of the work that you've done on Joe [15] Camel, researching those issues, has been for [16] RJR. Have you been retained by all of the tobacco [17] companies in this litigation or have you been [18] retained solely by RJR?

[19] A: Two-point question. Let's deal with [20] the first point. And I think the first point, as [21] I remember it, you said most of my work about Joe [22] Camel has been for the RJR. I don't think that's [23] probably true. I'm not sure how you would [24] evaluate my work in the tobacco area and on Joe [25] Camel, but I've published a number of things that

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[1] were not funded by RJR or anybody associated with [2] them.

[3] The second part was -

[4] Q: Have you been retained in this [5] litigation just by RJR or all of the tobacco - or [6] all of the defendant tobacco companies?

[7] A: I don't know. I've never asked that [8] question.

[9] Q: Who pays your bill?

[10] A: Jones, Day.

[11] Q: Is it your understanding that they [12] represent RJR?

[13] A: They represent RJR. But I don't know [14] what sort of arrangement they have with other [15] tobacco companies, if any.

[16] Q: You have had no contact with other [17] lawyers - with lawyers from the other tobacco [18] companies?

[19] A: Yes, I have.

[20] Q: Okay. And who would that be?

[21] A: I've had contact with several people [22] from Philip Morris.

[23] Q: And who would those people be?

[24] A: I just remember one - the name of [25] one. Vivek Chopra, V-i-v-e-k, I believe. And

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recently another fellow, and I'm sorry, I forgot his name. Kevin, perhaps. I don't remember his last name.

Q: Other than the Texas, Mississippi, and Florida tobacco cases, what other tobacco companies have you been retained by, for litigation purposes, outside of these cases?

A: None that I'm aware of.

Q: Just RJR?

A: As I said, I'm not sure what the arrangement is.

Q: Okay. Let's talk just a moment about non-litigation matters. What tobacco companies have retained you for consulting services, whether it be advertising input or research and analysis not related to litigation? I understand that RJR funded some of your research, and I don't want to misstate the amount of it, with Joe Camel. Have you done that sort of research or any similar research for any of the other tobacco companies?

A: No.

Q: And that would be either United States or outside of the U. S., the answer would remain the same?

A: That's correct. Well, let me say that

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if you're talking about secondary research, which would be part of my discussions about what the literature would be, but no primary research.

Q: Now, secondary research, that's reviewing other literature?

A: That's correct.

Q: Okay. And who have you done secondary research for?

A: Well, that would be Philip – well, it would be through their law firm.

Q: Philip Morris?

A: Yes. It's really through the law firm and –

Q: Who is the law firm?

A: I'm trying to think of who they were. I'm sorry. It escapes my mind who it was right offhand.

Q: And does that relate back to what you're doing for Philip Morris in Australia, secondary research?

A: I presume so. I was retained by the law firm and, as I said, primarily we've simply had discussions concerning consumer decision making and marketing and that kind of thing.

Q: What's out there in the literature and

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that sort of stuff?

A: Yes. And how do I interpret – they want to know how it works.

Q: Okay. What work have you done for Imperial Tobacco?

A: Well, it was a law firm that may have been tied in with Imperial Tobacco in terms of kind of discussing with them information concerning the Canadian ad ban case.

Q: Tell me a little about that case, what you understand it to be.

A: It was back in the late '80s, as I remember it. And that concerned some legislation that would change the warning labels, ban advertising, and some packaging.

Q: And you were hired by this law firm who you believe to be retained by Imperial Tobacco to do what?

A: Well they, once again, wanted my opinions concerning how people make decisions in the marketplace concerning tobacco and other products; differences between different products, consumer packaged goods and tobacco, the impact of marketing activities.

Q: I want to ask you just a few questions

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about your wife's involvement with the tobacco industry. I've seen the name Katherine Staughn – is that right?

A: That's correct, yes.

Q: – listed as the coauthor of many of your publications.

A: Uh-huh.

Q: And I am correct that Katherine Staughn is your wife?

A: Been my wife for about two years.

Q: Prior to – let me ask you this: I know that she's listed as a coauthor, I believe, on the first – which of the three articles regarding trade character recognition, Joe Camel research, was she at Auburn University during? Was that the first one?

A: Probably all of them. We've just recently moved, almost two years ago, a year and a half ago, to Australia, and she was at Auburn University since I think about 1991.

Q: Does she go by Katherine Staughn or Katherine Mizerski?

A: Either goes by Katherine Staughn-Mizerski, or Katherine Mizerski.

Q: Okay. So if I wanted to go do some

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research at a library on her, I would probably be best off to check under both names?

A: Probably check on both, yes.

Q: All right. And you were married just prior to moving to Australia?

A: Yes. I think it's two years we have been married. We were married two years as of the 21st of June.

Q: Did she coauthor all – when I'm referring to the three articles or the Joe Camel articles, I'm talking about Trade Character Recognition and Attitude Toward the Product by 3 to 6-year-old Children, a Reevaluation of the Reported Influence of the Joe Camel Trade Character on Cigarette Trial and Use by Minors, and the Relationship Between Cartoon Trade Characters Recognition and Product Category Attitude in young children. Did she –

A: Recently I think you were provided with – there is a Social Marketing Quarterly article that will be coming out shortly.

Q: I don't think I was provided that, but I would very much like to see it. I noticed off your university's web page that you were listed as having this article soon to be published. I

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looked through the ten boxes. I don't think I found it. But then again it was ten boxes. If y'all could check.

A: That hasn't come out yet. So all I have is correspondence, E-mail correspondence with the journal editor, and my submission to them of the article. I've since asked what was the status and they have told that me it will be published along with a reprint of the original Journal of Marketing article concerning trade character recognition.

Q: Okay. You have a draft of that article, though?

A: Yes.

Q: Okay. And you can provide that to me?

A: Yes.

Q: All right. Now, did your wife coauthor that article as well?

A: Yes. She was the lead author on that.

Q: Okay. And she did coauthor all three of the previous articles?

A: Yes.

Q: Was she paid for her work on those publications?

A: Yes. I called her the other night and

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she was never paid by RJR. She did a – subcontracting through me.

Q: So you paid her, compensated her for her time?

A: For her time.

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[6] Q: Was this out of the – correct me if I [7] am wrong on this, I recall from the deposition [8] that the funding that you received from RJR was in [9] the amount of $60,000?

[10] A: Yes. I think about 67,000, perhaps.

[11] Q: And your wife, although not your wife [12] at the time, was paid out of that?

[13] A: Right. She subcontracted. I [14] subcontracted her as well as some other [15] individuals.

[16] Q: Do you know what the amount of her [17] payment was?

[18] A: No, I don't. Not offhand. I think [19] somewhere between perhaps 5,000 – I would be [20] speculating. I wouldn't expect it to be more than [21] ten. Perhaps five.

[22] Q: Okay. Is your wife currently retained [23] or employment by any tobacco company for any [24] purpose or retained or employed by any entity [25] rendering services to the tobacco industry?

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[1] A: She isn't presently nor has she ever [2] been, nor have I ever been retained in the sense [3] of having a retainer.

[4] Q: Well, that's probably a bad word to [5] use on my part. I consider you to be retained by [6] the tobacco industry as you sit here today in your [7] capacity as an expert witness. And let me put it [8] this way: Has your wife ever been paid any money [9] for providing services to the tobacco industry or [10] entities associated with the tobacco industry?

[11] A: Well, again, if I'm the entity, she [12] has been subcontracted, yes.

[13] Q: So other than the amount you paid her [14] out of your funding by RJR, there is been no other [15] activity that she's been involved with; is that [16] correct?

[17] A: Well, in any work, it would all be – [18] not only her, but I also used some graduate [19] students, depending upon what the task might be.

[20] Q: I want to talk to you just a little [21] bit about your compensation in this case and your [22] other cases. When I mean "other cases," [23] Mississippi and Florida. What is your fee [24] agreement with the defendants in this case?

[25] A: $250 an hour.

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[1] Q: Is that the same whether you're [2] testifying or reviewing documents or doing [3] whatever?

[4] A: Correct.

[5] Q: Do you bill while you travel? While [6] you sit on an airplane?

[7] A: If I'm doing something while I'm [8] sitting on the airplane.

[9] Q: Okay. If you sat on the flight over [10] from Australia and did nothing but watch the [11] movie, you wouldn't bill the tobacco company for [12] that?

[13] A: That's correct.

[14] Q: Do you have a written agreement?

[15] A: No.

[16] Q: Why is that? Nobody wanted one?

[17] A: It never came up. I rarely have one.

[18] Q: Were you given a retainer –

[19] A: No.

[20] Q: – in this case? [21] To date do you know what your total [22] bill is regarding the Texas litigation?

[23] A: No, I don't. It would be very [24] little. I probably have put in maybe five hours.

[25] Q: So just a little bit over, what is

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[1] that, about $1250?

[2] A: Yes.

[3] Q: What did you do in preparation for [4] your deposition today?

[5] A: I read the complaint.

[6] Q: That's the current plaintiff's live [7] pleading in the Texas case, first amended [8] complaint?

[9] A: Whatever the current – might be the [10] second one, Real thick one.

[11] Q: It may be. So –

[12] A: And reviewed my expert witness [13] statement and did some review just generally of [14] things I'd written.

[15] Q: You didn't sit down and go through the [16] ten boxes you had sent me just in preparation for [17] this deposition; is that correct?

[18] A: That's correct.

[19] Q: Okay. I want to talk to you about the [20] work that you've – the litigation work that [21] you've done for RJR in the Mississippi case and [22] the Florida case, and I guess the Mangini case. [23] Where is that pending, the Mangini case?

[24] A: Mangini is in California. I don't [25] remember the venue. I think it's San Francisco.

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[1] Q: Now I'm going to ask you to tell me [2] some hours you spent. I understand you may not be [3] able to tell me the exact areas, and that's fine, [4] I'm not going to hold you to it. But I do want to [5] try to get an estimate if I can.

[6] In 1997, how many hours have you spent [7] year-to-date for litigation-related work for RJR [8] or the tobacco industry? And let me tell you what [9] I mean by that: Reviewing other experts' [10] statements, documents written, all document [11] review, preparing your expert disclosures, [12] testifying, preparing to testify, giving [13] depositions, preparing to give depositions. Can [14] you give me an estimate of how many hours [15] year-to-date that you've spent?

[16] A: It would be a very rough estimate [17] because I haven't calculated all of this up. I [18] would say something in the area of about 300 [19] hours.

[20] Q: I don't know if you calendar this far [21] in advance, but do you know how many more hours [22] you expect to expend in '97?

[23] A: Primarily depends upon, I suppose, [24] folks like yourself or other states.

[25] Q: If the Texas case goes to trial on

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[1] September 29th, do you plan on appearing in [2] person?

[3] A: If I'm asked.

[4] Q: Now of the approximate 300 hours that [5] you've spent this year, that was all billed at [6] $250 an hour?

[7] A: Yes.

[8] Q: Okay. How many hours did you spend in [9] 1996 on this same type of work?

[10] A: Perhaps – I'm not sure. I would say [11] between 20 and 40 hours. I would just be – a [12] guesstimate, I suppose.

[13] Q: Things really got busy this year –

[14] A: That's correct.

[15] Q: – as compared to last year?

[16] A: That was actually done late in the [17] year.

[18] Q: Okay. How many hours have you spent [19] year-to-date for non-litigation-related work for [20] RJR or the tobacco industry? And I guess these [21] type of things would be what you're doing for [22] Philip Morris down in Australia, everything other [23] than what I explained to you as litigation-related [24] work.

[25] A: As I said, I'm not sure what exactly

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[1] is going to be done in Australia at this point.

[2] Q: Do you know how much time you've put [3] in so far?

[4] A: No, I don't remember how much time [5] I've put in so far.

[6] Q: Do you have a guess?

[7] A: Twenty hours, perhaps. Thirty hours.

[8] Q: Have they told you – do you have any [9] indication of how much time you may have to expend [10] on that project?

[11] A: No.

[12] Q: I assume that 20 hours was billed at [13] $250 an hour?

[14] A: Yes, I believe so.

http://legacy.library.ucsf.edu/tid/auq07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/fnhl0001

[15] Q: All right. Now Doctor, I'm not very [16] good at math and I'm not sitting at my computer so [17] you're going to have to forgive me about this, but [18] as best I can figure it, year-to-date you have [19] been paid $75,000 in tobacco -

[20] A: I've billed that. I haven't been paid [21] that.

[22] Q: Okay. You've billed out 75,000. If [23] you were to receive payment on all of that, and [24] I'm sure that you will, what percentage of your [25] income, your 1997 annual income would that

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[1] comprise?

[2] A: 30 percent, perhaps.

[3] Q: I want to go back just for a minute [4] about your preparation for this deposition. Who [5] did you speak with in preparation for this [6] deposition? I know Mr. Beach you mentioned [7] earlier. Is there anybody else?

[8] A: Well, I believe pretty much today was [9] "hello" and - I wouldn't say there was a [10] preparation as such.

[11] Q: You didn't sit down and -

[12] A: No. We met perhaps about 15, 20 [13] minutes before our coming into this room.

[14] Q: Okay. How many depositions have you [15] given, Doctor?

[16] A: In my life?

[17] Q: Yes.

[18] A: Somewhere around 15.

[19] Q: How many -

[20] A: Maybe more.

[21] Q: How many times have you testified at [22] trial?

[23] A: Probably an equal number. Maybe more.

[24] Q: When you're doing your consulting work [25] for RJR or Philip Morris, whether it be litigation

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[1] or non-litigation related, where do you do that [2] work from?

[3] A: My home.

[4] Q: You have an office there at your home?

[5] A: That's correct.

[6] Q: You make your phone calls there?

[7] A: Yes.

[8] Q: Who handles the typing of your [9] correspondence and reports?

[10] A: Probably myself. Occasionally my wife [11] will do it.

[12] Q: I do my own typing too so I understand [13] that.

[14] Do you use a personal computer that [15] you have at home or the university computer to [16] do -

[17] A: No. I use my own computer.

[18] Q: Do any of the Griffith University [19] students help you with your tobacco-related [20] research?

[21] A: If they do, they're funded. I pay [22] them.

[23] Q: Now, is this a type of situation that [24] you have with your wife where the RJR funding [25] comes to you and then to the students, or is this

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[1] coming from a different source?

[2] A: Basically it's depending upon the kind [3] of work. If we're talking about library work to [4] get articles out of library, I don't think it's [5] really worth my time to go to the library. In [6] fact, I probably wouldn't be very good at it. My [7] graduate students would do that kind of thing.

[8] Q: Okay. You say if they do it's [9] funded. Do they, in fact -

[10] A: Yes. I pay them.

[11] Q: Okay. And you have students to help [12] you with your tobacco-related research?

[13] A: Over the number of years, I pay them [14] if they do anything for me concerning that, yes.

[15] Q: Do you have anybody helping you right [16] now? A student?

[17] A: Yes.

[18] Q: What would those - either that [19] student or those students' names be?

[20] A: I've had a Terrance Tam, T-a-m, help [21] me gathering articles from the library, or any [22] other way they can be obtained.

[23] I have a student, Victoria Hodgson, [24] who is assisting me in obtaining some articles.

[25] Q: What's her name again? I'm sorry.

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[1] A: Victoria Hodgson, H-o-d-g-s-o-n.

[2] Q: What classes are you teaching right [3] now at Griffith University?

[4] A: Right now I teach a consumer behavior [5] class at the undergraduate level.

[6] Q: All right.

[7] A: Approximately 280 students in there.

[8] Q: What do you teach at the graduate [9] level?

[10] A: The graduate level I teach a class [11] called the Effect of Promotion on Consumer [12] Decision Making. And it is a Ph.D. honors [13] master's subject. That's what I teach semester [14] two. The undergraduate subject I teach semester [15] one.

[16] Q: We talked briefly about the three Joe [17] Camel articles, and I read the titles and you [18] recognized those to be articles that you had [19] authored in whole or in part; is that correct?

[20] A: That's correct.

[21] Q: Are those the only articles or [22] publications that you participated in addressing [23] Joe Camel?

[24] A: To the best of my memory, yes.

[25] Q: This new article that's coming out,

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[1] does it relate to Joe Camel in any way?

[2] A: Yes.

[3] Q: Is that - okay. [4] So then there's going to be four total [5] once this article - when this article is [6] published; is that correct?

[7] A: Yes.

[8] Q: Let's talk just a minute about your [9] coming to do the Joe Camel research. When were [10] you first approached by RJR about doing the [11] research?

[12] A: I believe January or February, early [13] February of 1992.

[14] Q: Who approached you?

[15] A: I don't remember who contacted me.

[16] Q: Was it a lawyer or an employee of RJR?

[17] A: I'm speculating here, but to the best [18] of my memory, it was an attorney.

[19] Q: Okay. Were you a tenured professor at [20] FSU at that time?

[21] A: Yes.

[22] Q: Florida State University?

[23] A: Yes.

[24] Q: And what exactly did they say to you [25] when they contacted you, the folks at RJR?

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[1] A: Well, as I said, I think it was [2] someone with Womble, Carlyle, which is a law firm.

[3] Q: All right. And what did that lawyer [4] tell you?

[5] A: I don't remember exactly what it was. [6] To some extent they want me to come up to [7] Winston-Salem and discuss several articles that [8] had appeared in a December 11th JAMA, Journal of [9] the American Medical Association.

[10] Q: This is Dr. Fischer's article?

[11] A: Dr. Fischer's, Dr. Pierce's, and [12] Dr. DeFranzo, all, of course, had coauthors as [13] well.

[14] Q: Prior to that time had you done any [15] research regarding Joe Camel?

[16] A: No.

[17] Q: Now, however, at the time you

http://legacy.library.ucsf.edu/tid/auq07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fhhl0001

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were approached, you had done some work for RJR and some of the other tobacco companies; is that correct?

A: That's correct.

Q: You'd done the Imperial work?

A: Well, they were at least one of the group of people I had had some contact with through their attorneys.

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Q: And you had done some work for RJR before the FTC?

A: That is correct. I had also reviewed some documents.

Q: Let me ask you about that a little bit. I noticed in your deposition –

A: Get some coffee?

MR. ANGELOVICH: Why don't we take our first break. This will give me a second to find what I need to find.

THE VIDEOGRAPHER: Off the video record.

(A recess was taken.)

THE VIDEOGRAPHER: We're on the video record.

Q: (By Mr. Angelovich) Doctor, we're back after a short break. We were talking prior to the break about some work that you had done for RJR in reviewing documents that were going to be presented to the FTC.

A: That was my – no, they had been presented.

Q: Okay. Now – all right. Let me back up. My understanding is that there were documents that had been subpoenaed by the FTC from RJR; is

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that correct?

A: That's correct.

Q: And your role – your involvement in that was what?

A: They had already been submitted to the Federal Trade Commission. I was asked to review those documents, to review – I've reviewed documents many times. Documents that have either legal bodies or other attorneys or whatever would be interested in just to kind of take a look at it. How people would review them, how they would look at them, that kind of thing.

Q: In your Mississippi deposition, you can just – so I don't get accused of misquoting you, you state that you were going to review them to see if there were any problems with them. What do you mean by problems with them? I just need a clarification on that.

A: Yes. Well, as I said, I've had some experience in reviewing documents to see to what extent people may either misinterpret or interpret a document.

Q: Did you –

A: To what extent a document may be based on a methodology that was flawed or not, to what

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extent it would be research that would be in sort of the mainstream marketing or not. There could be a whole broad range of input I could provide.

Q: Did you find any documents that you consider to be a problem?

A: No. Now I can't tell you – I was given some documents. I don't know if they were all the documents, more than all the documents, whatever. But –

Q: Of the ones you looked at –

A: – what I looked at I did not – no, I did not see any problems.

Q: Prior to the time that RJR approached you about doing Joe Camel research in either January or February of '92, had you already published articles that subscribed to the mature market hypothesis?

A: I think probably work that I did in terms of consulting would. And I'm not sure about specific articles, but most of my work in the consulting area has been with mature markets, has been with that area. So that's a very important part of understanding how marketing has an impact on the consumer and to what extent things like advertising promotion can have some use, either

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tactically or strategically.

Q: And it's my understanding that your opinion in this case is based, in part, on the mature – the fact that – the premise that you believe that the – that a cigarette is in a mature market stage; is that correct?

A: Well, that's a certainly important part of not only my opinion here, but anytime you're talking about what would be the impacts or have been the impacts of various marketing elements where that particular product, whether it be a good or a service, is in its product life cycle.

Q: And I'm going to show you a copy of your CV.

MR. ANGELOVICH: Can you mark that, please.

(Deposition Exhibit 4 was marked.)

Q: (By Mr. Angelovich) Doctor, I'm going to hand you what's been marked as Deposition Exhibit Number 4. Can you identify that document?

A: This would be – actually, there's a more updated document, I believe.

Q: There is a more updated?

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A: Yes. But yes, this is – probably was good up until early this year.

Q: What's changed on it?

A: Well, the – I believe the article coming out in Social Marketing Quarterly isn't on here. I've got some proceedings that would be on here dealing with baseline analysis, which would be mature market oriented. Also some things dealing with elasticities, I believe, of the effectiveness of various kinds of promotion and in store on candy and some other products, I think. I also have another book coming out.

Q: And what is that book entitled?

A: Cyber Marketing. There's kind of a subtitle to it.

Q: I saw that on one of the Griffith University press releases.

A: I haven't seen the site lately. Somebody's updated it, so probably much of that is on there.

Q: Can you look at the articles that are listed there and, if you would – I'm going to hand you a pen. Could you write an "MM" by those that are based on the mature market hypothesis?

A: That are based on – well, they

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certainly incorporate that. But I will certainly put that in there, yes.

Q: Okay. That's fine. Actually, Doctor, let's do something. Let's hold off on that a second. I'm going to ask you to mark another thing on there. Let me get to that point and we'll just take a break off the record and you can – is that fine with you?

MR. McDERMOTT: Mark them both at the same time.

MR. ANGELOVICH: Just – get it done.

MR. McDERMOTT: Sure.

Q: (By Mr. Angelovich) Okay. Similar type question for the rational model of consumer behavior?

A: Rational model?

Q: Rational model.

A: Is that what you said?

Q: Yes. Are you familiar with that term?

A: There's something called the reasoned action.

Q: Okay. Let's talk about that a little bit. Explain that to me, the reasoned action.

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[25] A: Well, how far do you want to go into

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[1] it?

[2] Q: Not very at this point.

[3] A: All right.

[4] Q: Give me just –

[5] A: It's primarily based on – it's sort [6] of a very cognitive kind of model. I think [7] probably one would tie its origins back to Marty [8] Fishbein, a lot of stuff he did in terms of [9] attitude models. And, of course, Marty Fishbein [10] also based his on other individuals like I think [11] Rosenberg and Triandis and some other [12] individuals.

[13] Basically what that deals with is that [14] it suggests that people develop attitudes or [15] affect based on their belief that an object has [16] certain attributes, salient attributes, and how [17] they also weigh those attributes, and that [18] individuals go through some process of evaluating [19] those attributes. And there are various [20] approaches that can be used: compensatory, [21] lexicographic. There are a number of different [22] approaches. And they weigh this information that [23] leads them to perhaps forming affect.

[24] Then there are some other factors that [25] would lead to – they would be social factors and

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[1] some other things that would ultimately lead to [2] whether they intend and actually do behaviors [3] concerning –

[4] Q: Like buying?

[5] A: – the object. Could be buying, yes.

[6] Q: So as I understand it, they collect [7] information first and then – the consumer, that [8] is, collects information, then forms a feeling one [9] way or another about the object, let's just say a [10] product, and then makes a decision?

[11] A: Well, yes. That would be a rough way [12] of putting – collecting is – if we put in there [13] their experience, they're not actually – they [14] don't necessarily have to go out and collect [15] information from Consumer Reports and that kind of [16] thing. It could be their experience. It could be [17] their satisfaction in the past with the product. [18] But it's primarily a cognitive one in that we're [19] largely looking at mental processes, conscious [20] mental processes about how people come about [21] making a decision.

[22] Q: Okay.

[23] A: That's kind of the theory of reasoned [24] action.

[25] Q: Okay. That's what I was looking for.

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[1] Just kind of an overview.

[2] At the time that – prior to the time [3] that RJR approached you in January or February [4] of '92, had you already published articles [5] subscribed to the reasoned action model or [6] incorporating that model?

[7] A: Well, building it. You know, the [8] model has some implications in terms of [9] measurement and a number of other things, but it's [10] been quite a number of years since I would wholly [11] subscribe to that model, particularly if you're [12] talking about consumer packaged goods that are [13] sort of in that mature stage, a lot of [14] competition, et cetera.

[15] Q: Okay. So the model may or may not [16] apply in a particular situation, is that what [17] you're saying, by wholly subscribing to it?

[18] A: Well, yes. It may or may not apply. [19] That is correct.

[20] Q: Okay. After we get done with your [21] marking your CV, I want to talk to you about some [22] of the other models at some point during the [23] deposition. But what I would like you to do is in [24] addition to the "MM's" that you're placing next to [25] the articles –

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[1] A: Let me make a legend here. So MM's [2] are –

[3] Q: Mature market.

[4] A: Okay.

[5] Q: And then RAM would be the reasoned [6] action model.

[7] A: RAM?

[8] Q: Yes. RAM. If you would mark next to [9] the articles that are either based on or [10] incorporate those concepts, I would appreciate [11] that.

[12] A: Right now?

[13] Q: We'll take a break while you do that. [14] Fair enough?

[15] A: All right. Right now?

[16] Q: Yes, please.

[17] THE VIDEOGRAPHER: Off the video [18] record.

[19] (Off-the-record discussion.)

[21] THE VIDEOGRAPHER: Back on the [22] video record.

[23] Q: (By Mr. Angelovich) Dr. Mizerski, [24] we're back from a short break. You've completed [25] what I asked you to do, which was to mark the

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[1] articles and publications that are listed on your [2] CV with either an MM, or an RAM, or both, to [3] indicate that they are based on or incorporate [4] either the mature market or reasoned action [5] model. Have you done that?

[6] A: Right. In other words, my thinking or [7] a measure or something had some link with that.

[8] Q: And –

[9] A: Or a test of it or put that up as a [10] straw man, perhaps.

[11] Q: All of the handwriting that appears on [12] Deposition Exhibit Number 4, that is your [13] handwriting, correct?

[14] A: That's correct.

[15] Q: Okay. Let me ask you this without [16] having to look through all of this. The three [17] articles or publications that relate to the Joe [18] Camel research, do those incorporate the mature [19] market hypothesis?

[20] A: Probably in some way, yes, they do.

[21] Q: What about the reasoned action model?

[22] A: They probably deal with it in some [23] sense in either testing or alluding to that [24] concept in some way.

[25] Q: And would that also be – would both

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[1] of these theories or hypotheses also be some way [2] associated with your new article that's [3] forthcoming?

[4] A: Yes.

[5] Q: Now, all of these articles are, in one [6] way or another – and please tell me if this is an [7] incorrect statement – are critical of [8] Dr. Fischer's research?

[9] A: Well, certainly he did the initial [10] article that sort of brought to force some [11] empirical material concerning Joe Camel and [12] alleged affect on children.

[13] Q: And tell me if this is a fair summary [14] of his research, that a majority of three to [15] six-year-olds recognize the Joe Camel character [16] and could correctly match it with a cigarette [17] product category.

[18] A: That's correct.

[19] Q: Now, prior to RJR approaching you on [20] the Joe Camel project, had you written any [21] publications or done any research regarding [22] Dr. Fischer's report or study?

[23] A: No.

[24] Q: When RJR contacted you, did they [25] indicate to you that they were aware of

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[1] Dr. Fischer's study and report?

[2] A: Yes.

[3] Q: Was the purpose of their contacting [4] you to do research to discredit his research or [5] criticize his research?

[6] A: Well, when I came to talk to them, it [7] wasn't clear exactly they wanted a

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Source: http://www.industrydocuments.ucsf.edu/docs/fhhl0001

discussion. They wanted to have, I guess, someone who is aware of the research in the area give them some feedback about the adequacy of the study, to what extent it appeared to be an accurate depiction of what they suggested they measured.

Q: And these were the folks at the law firm you discussed with?

A: Yes.

Q: Womble and what?

A: Womble, Carlyle. Also in that discussion not only with the attorneys but some individuals at RJR.

Q: Do you remember who those individuals were?

A: I remember as – which meeting will you be talking about?

Q: Well, how about the first?

A: First meeting. There were a lot of

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people. I only remember one individual, but there were a number, and that would be Guy Blinn.

Q: Do you know whether RJR sued Dr. Fischer over that study and report?

A: I know there was something in terms of trying to obtain material. I don't know what the nature of it was.

Q: Okay. Now we talked about the people you remember at the first meeting. Why don't you tell me all of the people at RJR, excluding their attorneys, that you remember having some contact with for the entirety of these Joe Camel projects. I guess that may continue up till – through the time of your forthcoming article.

A: Ernie Fackleman. Kevin Verner. I believe a Maura Payne and a Peggy Carter.

Q: At the initial meeting, was there any discussion of you doing a study similar to Dr. Fischer's?

A: The meetings, there were several meetings. And at the end of I guess the last meeting, and there were several meetings with different individuals talking about what did they find, what does it mean, is there any collaborative research in that area, and at the

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end of it, I was asked to replicate the study.

Q: Identical replication or not?

A: Well, it was up to me. So I was there – I wasn't just told what to do. They had asked if I could replicate the study to see if a study that had a clean methodology, as clean as one could be, a good sample would also reveal recognition – or really matching levels. Recognition is not exactly what we would call that, but matching of various trade characters to products, or logos to products.

Q: And that's what they intended to pay you to do?

A: That's what they wanted me to do, yes.

Q: Okay. When did you discuss your fee in that – for that research?

A: I don't remember ever discussing my fee.

Q: Okay. Well, how did you come to be paid $67,000 for the project?

A: I would bill them by the hour I spent.

Q: And was this at $250 an hour or was it less –

A: It was less.

Q: – back then?

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Do you know what it was?

A: It could have been 175 at that time.

Q: Was there an expected end product of the research?

A: Not that I remember.

Q: Do you recall any discussions regarding what RJR would like to see come out of the research?

A: No.

Q: Early on was it discussed that you would just replicate the study and collect data, or was it intended from the start that you would publish an article regarding your research?

A: There was never a discussion about publishing. There was a discussion about who owned the data, and that was me. That was my sole data. I was the client.

Q: I'm going to get to that in a minute. Did you expect that a published article would be an outcome of this research?

A: I always like – to the extent that I can, if I have good data, I like to publish it. I don't remember if I thought about it at that early stage.

Q: Do you approach most of your research

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in a manner that is aimed towards publications, the end product?

A: Yes. To the extent that I'm able to use the data that I obtained.

Q: Now, I know that your wife assisted you on some of this research and that her payments came through you. What about – let's split this up. Assistants, people that worked directly for you, and then people that did the data collection, who was responsible for paying those folks?

A: The data collection was paid for by either the Womble, Carlyle or RJR. I'm not sure who.

Q: And who handled that, the data collection?

A: MARC, M-A-R-C.

Q: Do you know what they were paid for the work?

A: No.

Q: Have you used that firm before or since that time – MARC, that is?

A: Have I used that firm before or since that time?

Q: To collect data for you in other studies?

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A: I'm not sure. I might have used them at the FTC, but I don't remember right offhand.

Q: Regarding your assistants, how were they paid?

A: I paid them based on their hours that they expended doing various tasks.

Q: After you paid Ms. Staughn and your assistants, how much of the $67,000 was left for you?

A: I think that would all be my hours.

Q: So the – what was the total amount either paid directly to you or through you to assistants?

A: I don't remember that. Again, expenses and plane fare, I traveled around the country reviewing and observing and discussing. So I don't remember what the total billing would be.

Q: More than $100,000?

A: Probably.

Q: More than 2?

A: No.

Q: So between say, 100, 150?

A: No. Probably between 67, which would be how much I received for my specific time,

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and – I would say maybe 100,000. I don't think it would be more than that, but I don't remember.

Q: Do you have a copy of the contract that you entered into with RJR to do this research?

A: I didn't have a contract.

Q: Is that your normal course of business?

A: It depends upon the client.

Q: When would you require a contract?

A: I started requiring contracts for automobile dealers.

Q: Now, there are a lot of issues in this

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research that you're doing that need to be addressed that I personally would expect to be addressed in a contract, you raised one of them earlier, which is ownership of the data. Were you just given their word that you would own the data?

A: Yes. And that word was – that all was discussed in front of representatives of MARC.

Q: So despite the fact they paid for MARC to actually collect the data, you owned it?

A: That's correct.

Q: Now, that being the case, I have gone

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through those ten boxes that were provided to me, and I can't find that data anywhere. Was that supposed to be produced?

A: I don't know.

Q: Okay. Well, I need to have that. And my understanding is that in neither the Mississippi nor the Florida cases that's been produced.

A: First of all, the data can be reproduced from the article.

Q: Explain that to me.

A: Well, since I had two binary measures – and I believe there's tabular data in there that would enable one to reproduce that data, because you would know how much individuals, for example, at each age group recognized and liked to dislike. All of the recognition and affect data can be reproduced, I believe, from the article that's given.

Q: Now, that assumes that the data is accurately reflected in the article; is that correct?

A: Yes.

Q: Okay. And you're going to have to forgive me on this, but I would like to see the

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data to make sure that the article conforms to the data.

A: Okay.

Q: And so I'm going to make a request on the record now that we get that. Obviously I'm not going to have it in time for the deposition. I knew that coming in when I couldn't find it in the boxes.

A: Let me note some other thing. And that's fine. I have always provided data to anyone who requested it.

Q: Okay. Great.

A: But I would hope people would only use it to review my results, not to publish further information, because it's my data. I spent a great deal of time collecting it and I don't want to give somebody the data set that they can go off – because I have other things I would like to publish with it.

Q: I can assure you –

A: Can there be some, you know, agreement that if you're people are going to use it that they would use it simply to check and verify my figures and not to go on and publish other aspects of it?

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Q: Doctor, there is an agreement in this case in the Eastern District regarding confidential material, proprietary information that covers that very issue. I can assure you that it will only be used for that and once this litigation is concluded, it will be given back to you.

A: That's fine.

MR. McDERMOTT: We'll work with you on that. We will, of course, expect reciprocity in appropriate situations.

MR. ANGELOVICH: You will get it from me.

MR. McDERMOTT: And your colleagues, I'm sure.

MR. ANGELOVICH: I would think so.

Q: (By Mr. Angelovich) You own the copyright to your articles as we'll –

A: Yes.

Q: – is that correct? Did your relationship with RJR regarding the Joe Camel research start as a consultant? And I mean – let me try to clarify that. Were you doing – was it expressed to you

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one way or another whether you were doing this internally for RJR or, as you stated, with an eye towards publication? Was that ever discussed?

A: The publication was never discussed.

Q: Okay. While you were –

A: It certainly wasn't discussed early on. At some point I said, "I would like to publish this and I'm going to try to publish it."

Q: Okay. I'm going to talk to you about that in just a second.

During your research as the project was ongoing, were you required to deal with or report to any attorneys employed by RJR?

A: Was I –

Q: – required to report regarding the status of the research, how it was going?

A: No.

Q: You didn't have any day-to-day or week-to-week contact with the folks at RJR or their attorneys regarding the re –

A: Yes, but I wasn't required to.

Q: Okay. And what did these conversations entail? Was it a status report or something different?

A: I don't remember. There wouldn't be

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many contacts. I don't remember the specifics. It wasn't something I had to call in. But if I needed some information, for example, or – I don't remember much in terms of the attorneys, really.

Q: As you were going along collecting data or coming up with results, were working papers or partial reports ever required to be submitted to any attorneys or to any RJR employees?

A: Nothing was required to be submitted, no.

Q: Was it submitted?

A: As I would write something up, I would send them, as a courtesy, a manuscript.

Q: Just so we're perfectly clear on this, if somebody wants access to your data, they need to talk to you personally and not RJR; is that right?

A: If they want access to my data?

Q: Uh-huh.

A: Yes. Because I don't know if they have a copy of my data.

Q: Did RJR retain the right to review any article prior to it being published –

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A: No.

Q: – or submitted for publication?

A: No.

Q: Regardless of that fact, did they review it?

A: I don't know.

Q: They never provided you with any sort of comments or changes or criticism?

A: RJ did not, no.

Q: Did RJR have the right to approve the experiment design?

A: No.

Q: How about the demographic criteria for the sample?

A: No.

Q: The method of data collection?

A: No.

Q: How many drafts of your article, if you can remember – of the three articles did you have?

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[21] A: Well, I would have, you know, finished [22] in the proceedings. I don't know if I would [23] have – I don't know how many drafts I would [24] have. Probably very few of them.

[25] Q: Did you ever –

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[1] A: Some of them became conference [2] discussion documents and probably I would have it [3] in that format. But I – once I moved over to [4] Australia, I should have had more forethought, but [5] I never really thought I would be involved in this [6] again.

[7] Q: Did you send any of those drafts to [8] RJR or their attorneys for review?

[9] A: Not for review. The only thing I ever [10] sent them, and I don't remember if I sent [11] something for a journal or if I sent something to [12] the proceedings, I would send them, as a matter of [13] the courtesy, what I was sending off.

[14] Q: Did they ever provide any comments?

[15] A: No.

[16] Q: Did they ever say, "We're pleased with [17] your results"?

[18] A: I don't remember them saying that, no.

[19] Q: When I say comment, I'm not talking [20] actually about a written comment on the documents [21] document, that would include any verbal comments [22] they made regarding the results.

[23] A: I don't remember anything. I think [24] they were very careful not to even suggest [25] anything, because I certainly let it be known that

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[1] I don't take those kind of comments. It was my [2] research, et cetera.

[3] Q: At the time that you published the [4] first article and were collecting the data [5] regarding the first article, did RJR ever tell you [6] that they expected or anticipated using you as an [7] expert in any litigation?

[8] A: No.

[9] Q: That came later?

[10] A: That came late '96.

[11] Q: Okay. Now we've talked about MARC as [12] being the data collection group. What other [13] entities were involved in this project, at any [14] level?

[15] A: Well, there would be data collection [16] facilities, focus group facilities that would have [17] been contracted through MARC, presumably.

[18] Q: These were located in the cities in [19] which –

[20] A: Yes. And interviewers, the specific [21] contracts or payment of those individuals would be [22] through MARC.

[23] Q: They handled it? You weren't actually [24] involved in handling that, setting that up?

[25] A: Well, I was involved in developing how

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[1] they were done, the critique of the interviewers, [2] the evaluation of the interviewers, but I didn't [3] have a unique set of interviews that I suggested [4] that they use.

[5] Q: Did you have any grad students at [6] Florida State University helping you with this [7] project?

[8] A: Yes, I did.

[9] Q: What would their names be?

[10] A: I had Brenda Sonner-Fox, one of my [11] Ph.D. students.

[12] Q: Anybody else?

[13] A: I don't remember anyone else right [14] offhand.

[15] Q: How was she paid?

[16] A: By hour.

[17] Q: Okay. And she was paid by you?

[18] A: By me at a consulting firm – paid [19] through them.

[20] Q: Your consulting firm?

[21] A: Uh-huh. Yes, sir.

[22] Q: And what was the name of that firm?

[23] A: Richard Mizerski & Associates.

[24] Q: Did you have anybody volunteer time on [25] that project from Florida State?

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[1] A: No.

[2] Q: I know that you've discussed the data [3] collection and the methods that you used in the [4] other deposition so I don't want to go through it [5] all again. If you can give me, though, just an [6] overview of the process from start to finish, and [7] I'm talking about broad categories like, you know, [8] we come up with a hypothesis, then we come up with [9] the questions we want to ask the children, then we [10] do this and we do this. Can you kind of walk me [11] through that, how it went from start to finish?

[12] A: When ultimately it was determined by [13] someone, either at RJR or Womble, Carlyle, or in [14] combination – I don't know how they made the [15] decision, and I was asked to replicate the study, [16] I had suggested that not only should it be [17] replicated, because there appeared to be some [18] ethological flaws in the first study, but what I [19] thought the most important question is what I [20] would say the "so what" question. So what if [21] there was this high recognition or matching? What [22] would that possibly lead to? Because it was [23] alluded to, by Dr. Fischer and others, that [24] somehow this measure of what we could call memory [25] would be associated with ultimately use,

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[1] initiation, experimentation later on.

[2] Q: Doctor, let me stop you. And I don't [3] mean to interrupt you, but that's probably a [4] little more detail than I was looking for. And I [5] guess that's what I get for asking a question like [6] that.

[7] Actually, all I really want is a [8] chronology of events. You were contacted. You [9] came up with a hypothesis.

[10] A: You can interrupt me if you would [11] like. I'm just trying to give you the [12] information, trying to be very careful about it –

[13] Q: And I appreciate it.

[14] A: – you understanding how it came [15] about. I don't know how in depth you would like [16] it to be.

[17] Q: Okay. Let me ask you this: The first [18] step was did they asked you to replicate the [19] study?

[20] A: Yes.

[21] Q: And based on I think some of the [22] reasons you were giving me, you decided that that [23] was research you would wanted to undertake; is [24] that correct?

[25] A: Yes. I thought – you know, I always

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[1] somehow in the back of my mind, if I believe I can [2] use the data, think about implications in terms of [3] really the discipline, because that's – primarily [4] in the research in the area of marketer. I [5] thought if we're going to do something in looking [6] at the matching level, I would sure like to do [7] something that would be done more appropriately, [8] because I didn't want to be involved in something [9] that wouldn't be done appropriately. I thought, what would be the most appropriate way to do [11] it?

[12] But from the first time I read Dr. Fischer's work, I was really struck with [14] how – and I note it in this recent article that [15] it's kind of deceptive to talk about the idea that [16] recognition in and of itself is going to have any [17] effect. I have been working this area about 20 [18] years, primarily in consulting with other [19] commercial venues. And I felt that recognition [20] was not a particularly – it really wasn't an [21] indicator of what's going to happen in the future.

[22] Q: Now, as I stated a second ago, I said [23] my question was bad. I don't want you to go into [24] this much detail. Okay.

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And your lawyers will get the chance to ask you questions and explain

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your reasons for doing the work that you've done.

What I'm interested in is just a chronology. We've got to the point of they've come and asked you to do the research, you've decided to do the research. What was the next step? Was it the design of the experiment?

MR. McDERMOTT: All right. Let me interpose a comment here. You can ask any questions you want but, Dr. Mizerski, you answer as you see fit. And you pledged at the beginning of the deposition not to interrupt the witness and I will ask you to abide by that pledge.

Try to be responsive, Dr. Mizerski, but if you have something to say, go ahead and say it.

Q: (By Mr. Angelovich) All right, Doctor. Now this is just going to be a yes-or-no question. Was the next stage of the process the design of the experiment?

A: The next stage would be to take a look at the literature to see what other measures could be used.

Q: Was the next step the design of the experiment?

A: Would be the development of

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hypotheses, next step.

Q: The next step, would that be the design of the experiment?

A: Yes.

Q: Would the next step be data collection?

A: The next step would be pretesting.

Q: What would follow pretesting?

A: Well, it could be part of the methodology, but after pretesting, and that involved a broad range of topics, then would be data collection.

Q: After data collection, is the analysis of the data performed?

A: Would be what we would call setting up proposed error levels to use. In other words, I didn't want to do analysis and then after the fact try to figure out was my error level correct. Because error level - maybe I'm getting too deep for you here. So it was important that I developed beforehand what were the analysis that were going to be used, how would I look at the data, what error levels would I use, what comparisons would I make before I ever actually did the analysis.

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Q: Okay. And after determining your proposed error levels, you conducted your analysis?

A: Then there was the data collection.

Q: Okay. So that -

A: Then there was - before the data collection, the main data collection, there were - sat down and developed, really in an analysis, procedure what was going to be analyzed, what hypotheses would be tested, what statistics would be used, what, if any, adjustments would be made to error level based on the number of comparisons and the kind of data that I would have.

Q: Okay. After you did your analysis, after you've collected the data and you get to the analysis point, is drawing a conclusion and writing the article, was that the final step?

A: No. Then there would be, you know, testing the hypotheses.

Q: Anything else?

A: Taking a look at how either the acceptance or rejection of that - of those hypotheses fit in with previous data.

Q: All right.

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A: Previous studies.

Q: Next? Next step?

A: Next step would be to kind of write up a report.

Q: Which contained your opinions and conclusions?

A: Basically testing the hypotheses, yes, procedures that we went through, et cetera.

Q: Okay. At all these steps, I assume various documents were being generated. Is that a fair statement?

A: Yes.

Q: Some of that's going to be data collection, some of it's going to be your proposed error levels, and testing the hypothesis; is that correct?

A: Yes.

Q: Okay. When you say that you have ownership of the data in this case, does that include the documents that were generated during all of these other steps?

A: Yes.

Q: Okay. So when you provide me with the data for your experiment, it's not just going to have the sheets with the answers or the results of

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the actual test that was going on, it's going to have all of the documents associated with each of these steps; is that correct?

A: Well, to the extent I retained them after the article was published, probably along the process I would not collect all of it or keep all of it. Of course when I made the move, I had a 20-foot container. That's all I had to bring all of our things with. I'm not sure all the material came along.

Q: Everything that you have in your possession?

A: Everything that -

Q: You're going to provide me everything you have in your possession?

A: If you would specify what it is that you're looking for.

MR. McDERMOTT: We'll talk about this at some point. We'll provide you, on a reciprocal basis, the quantity and quality of information which we receive or expect to receive.

MR. ANGELOVICH: Okay.

MR. McDERMOTT: We'll work with you on that.

Q: (By Mr. Angelovich) You say that you

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had to leave some of it at home - at home - in Florida.

A: Leave it?

Q: Was it discarded?

A: I discarded it, yes.

Q: Okay. What were your dates of employment at Florida State University?

A: Probably about January of 1981 - I think it actually started in September of 1980, but I didn't leave - I asked for an extension because I didn't leave the FDC full-time until sometime in December of 1980. I wanted to finish out the last quarter. So I would say they went from perhaps September of 1980 through to probably August of 1995.

Q: When did you become tenured at Florida State University?

A: I believe 1985.

Q: At the time that you were a professor at FSU, did the school have rules and procedures covering outside consulting, outside work?

A: Just the amount of time that would be spent.

Q: Okay. Was there a Faculty Handbook covering issues such as outside consulting?

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A: Very little mention about outside consulting. I think it was specifically a time constraint on it.

Q: Okay. So that's all you remember, there being a time constraint?

A: That's correct.

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Q: Okay.
(Deposition Exhibit 5 was marked.)
Q: (By Mr. Angelovich) Doctor, I'm going to hand you what's been marked as Deposition Exhibit Number 5. I'm going to represent to you this is portions of the Faculty Handbook, Florida State University, that I obtained off the Internet. I want you to just, if you could, briefly flip through there, I'm going to talk to you about some specific sections, and see if any of those regulations look familiar to you, whatsoever.
A: There was something called faculty research.
Q: Does that look familiar?
A: I don't remember specific sections at all.
Q: Do you have a copy of your Faculty

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Handbook from Florida State University still in your possession?
A: No. I really do remember reading – I have read through this at some point during my tenure there. There have been a number of different handbooks, depending upon what contract was signed at what time.
Q: With the professor? Is that what you referred to? What do you mean by "contract"?
A: Well, the union would bargain for a contract.
Q: Okay.
A: And that would affect what was in the Faculty Handbook.
Q: All right.
A: And those contracts were yearly.
Q: Do you recall –
A: So specifically what was in the handbook would differ from year to year. Sometimes they would lag substantially.
Q: Who at Florida State University would we contact about obtaining handbooks from, say, 1990 forward?
A: Probably – I don't know. I suppose their media people. You might want to start

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there. There's also somebody who's a vice president in charge of research. That would be an individual.
Q: I want you to look at a couple sections.
MR. McDERMOTT: Do you have an extra copy? Some of the other material we have had, but this is one which is new to us.
MR. ANGELOVICH: Do you want to take a break and copy it?
MR. McDERMOTT: I wouldn't mind. If we could take two minutes and get that done. If there's not anything else that's in the package, why don't we get that all done at the same time.
THE VIDEOGRAPHER: Off the video record.
(Off-the-record discussion.)
THE VIDEOGRAPHER: We're on the video record.
Q: (By Mr. Angelovich) Dr. Mizerski, just before the break I handed you Deposition Exhibit Number 5, which I represented to you is portions of the Florida State University Faculty

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Handbook as it existed on this date two days ago. You've indicated that at the time you were there, and please correct me if I am wrong, there was a handbook, although you believe it did change from year to year?
A: That is correct.
Q: Do you recall in any of the handbooks that you saw, the Florida State University handbooks, sections regarding professional development leaves and/or outside employment and activities?
A: I don't remember specifically what they said that there were – there was a general understanding that you were supposed to spend like one day a week, one working day, no more than one working day a week during the course of the whole year.
Q: Are you aware of the distinction that Florida State University draws between outside employment and professional development leaves?
A: No. I would be speculating. I can imagine there would be a difference.
Q: Okay. Let me read – and, Doctor, if you would turn to Section 6.13. And unfortunately, I didn't number the pages. It's

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the sixth page. Have you found that page? In the second paragraph that starts with "a Committee," the fifth line down, beginning with the word "Applications." "Applications are to be submitted" to "the department chairman, program leader or project director and dean of the school" –
A: I'm sorry. I don't follow that. Where do –
Q: Right there. "Applications."
A: Yes.
Q: Just follow along, make sure I'm reading this right. "Applications are to be submitted through the department chairman, program leader or project leader or project director and dean of the school or college in which the application has an appointment." Do you ever recall submitting such an application when you were contacted to do the RJR work?
A: I think this deals with the sabbaticals.
Q: Okay.
MR. McDERMOTT: Excuse me, Counsel. I don't mean to interrupt here, but I don't want to waste time. If you look at the

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second line of this provision, it appears to deal with employees who are not tenured. So I'm not sure what – we haven't specified in your question the time period at issue here, but –
Q: (By Mr. Angelovich) Well, the time period at issue is going to be when you were contacted to do the RJR Joe Camel work.
A: I also believe this deals with sabbaticals.
Q: And I apologize. What I'm trying to do, is there's two sections, one called "Professional Development Leaves," the other called "outside Employment Activities." I'm trying to get an idea where this falls. I get the idea it's not under Professional Development Leaves.
A: No, it wouldn't be. Not to my understanding.
Q: If you would turn, then, to 7.47 which I will tell you is about ten pages from the end, although, once again, I apologize for not marking the pages.
MR. ATLAS: 7.47?
Q: (By Mr. Angelovich) Yes, sir. It's entitled "Outside Employment and Activities." Do

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you have that page?
A: Yes.
Q: In the second paragraph under 1, beginning the fourth sentence down, quotes, "Outside activity." Have you found that?
A: Yes.
Q: Again, tell me if I read this correctly. "Outside activity is defined to mean any private practice, private consulting, additional teaching or researching, or other activity, compensated or uncompensated, which is above and beyond faculty or staff member's assigned duties and for which the University has provided no compensation." Did I read that correctly?
A: Yes.
Q: Did your work for RJR fall under

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Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/fhhl0001

that[18] definition?

[19] A: Yes.

[20] Q: In the next paragraph – excuse me. [21] I'm sorry. In Paragraph 2, same paragraph, [22] beginning at the first sentence.

[23] A: Same paragraph. First sentence.

[24] Q: Let's just go top to bottom of the [25] page. Let's go to the first paragraph, second

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[1] sentence. "No faculty member should engage in any [2] regular or intermittent activity which interferes [3] with the full discharge of the academic [4] responsibilities of teaching, research, and [5] service." Did I read that correctly?

[6] A: That's correct.

[7] Q: Moving to the next paragraph, the [8] first sentence, "The Florida State University [9] encourages University faculty and academic staff [10] to undertake outside activities, including [11] compensated outside employment, which will be of [12] public service or will increase their [13] effectiveness through enhanced professional [14] reputations and broadened experience relevant to [15] their University function." Does that mean you [16] want to take something in your area of expertise? [17] What does that mean to you?

[18] A: Well, it means to me that – and this [19] is typical of most universities. They encourage [20] people to do outside activities because they often [21] believe that getting experience in whatever it [22] might be, if it's – if you teach law, doing [23] actually some practice, or if you're a marketer, [24] actually understanding what happens in the [25] marketplace by doing outside employment. Yes.

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[1] they encourage people to do that.

[2] Q: Is it your understanding that in [3] taking such outside activities you can only do so [4] if they further the interest of the university? [5] You can't have a conflict with the interests of [6] the university in your outside activities, can [7] you?

[8] A: Well, that's a pretty gray area [9] because you're starting to get into freedom of [10] speech, so there may indeed. That's one of the [11] reasons we used to have tenure, is that this would [12] protect people to do research and things that [13] someone at a university may believe to be [14] whatever.

[15] Q: Okay.

[16] A: So I – it is broadly, at least during [17] the time I was there, and everybody was quite [18] aware of what I was doing, they were quite aware, [19] that what I was doing was not conflicting with [20] this.

[21] Q: Okay. Let's talk – I'm going to get [22] to the conflict section in just a moment. The [23] third paragraph, "Public service is one" – first [24] sentence. I'm sorry. "Public service is one of [25] the principal missions of the University. Public

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[1] service may be part of one's academic assignment [2] or may occur in conjunction with outside [3] activity. It is through the outside activities of [4] faculty and academic staff that much of the public [5] service component of the University mission is [6] accomplished." Do you agree with that statement?

[7] A: Yes.

[8] Q: The next paragraph, the second [9] sentence, which begins actually on the second line [10] with the word "They." "They," and they refer to [11] the Florida statutes, "further provide that such [12] activities shall not create a conflict of [13] interest, which is defined in Chapter 112.312 to [14] mean a situation in which regard for a private [15] interest tends to lead to disregard of a public [16] duty or interest. The responsibility for [17] complying with these provisions of Florida law is [18] placed upon the faculty or staff member." Were [19] you aware of that – was that provision in effect [20] when you were at the university?

[21] A: I don't know.

[22] Q: Was that a general concept that you [23] adhered to when you were at the university?

[24] A: Sure. Yes.

[25] Q: All right. Now, Doctor, do you

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[1] believe that the research you were performing for [2] RJR raised a potential conflict with your duties [3] as a public service for the state –

[4] A: Absolutely not.

[5] Q: Not even a potential for conflict?

[6] A: Not even a potential for conflict.

[7] Q: At the time of your research, was [8] there public concern at a state level in Florida [9] at that time with marketing of tobacco to [10] children?

[11] A: During the time I was there?

[12] Q: Yes.

[13] A: I don't remember. There may have [14] been, yes. Uh-huh.

[15] Q: Was there public concern at that time [16] in Florida reducing underage smoking?

[17] A: Yes. But there was also an important [18] part of doing good research to provide accurate [19] interpretation of what was happening.

[20] Q: Was there public concern at that time [21] in Florida about the influence Joe Camel may have [22] on children?

[23] A: Among some people.

[24] Q: Define that for me, please.

[25] A: The governor and the attorney general.

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[1] Q: Were you aware at any respect at the [2] time you agreed to do the Joe Camel research that [3] youth smoking, marketing of tobacco to youth, or [4] cartoon advertising were public policy or public [5] health concerns in Florida?

[6] A: Among some people, yes.

[7] Q: The governor?

[8] A: Well, just from what I read in terms [9] of his speeches and everything else, yes.

[10] Q: The governor and the attorney general?

[11] A: Yes.

[12] Q: And despite those public concerns [13] stated by the highest officer in the state and the [14] attorney general of the state, you as an employee [15] of Florida State University presented papers on [16] those very issues?

[17] A: Absolutely. Of course. That's how [18] science gets ahead. We don't determine science by [19] what the governor and the attorney general says. [20] That's – that is why there's tenure, that's why [21] there's academic research.

[22] Q: Let me ask you this: In the next [23] paragraph down, "Before engaging in any [24] compensated professional activity or any outside [25] activity which a faculty or academic staff member

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[1] should reasonably conclude may create a conflict [2] of interest, the faculty or staff member shall [3] submit to the department ... or appropriate [4] supervisor ... a written statement on the Florida [5] State University Faculty Outside Employment [6] Statement Form in compliance with University [7] instructions." Did you ever complete such a form?

[8] A: No. I had conversations with the head [9] of the school there, and I never felt it was in [10] conflict, and still don't

[11] Q: Did you fill out any forms?

[12] A: I can't imagine how the truth is going [13] to be in conflict with what the state further [14] offers.

[15] Q: I understand what your position is, [16] Doctor. Were there any forms that you filled out [17] with the university regarding your work with RJR?

[18] A: I discussed that. I had filled out [19] some forms, and it was the head of the [20] department's view that they weren't

http://legacy.library.ucsf.edu/tid/auq07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fhhl0001

necessary.

Q: Do you know what happened with those forms?

A: As I remember, I went to hand them in, he said it just isn't necessary.

Q: So you threw them away?

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A: Probably.

Q: Okay.

A: But remember, that this wasn't as it has to do with this particular part of the statute. I wanted it to be very clear and have no problem that I was doing this outside work, but I never felt, nor did anyone else I interacted with, felt that it was in conflict of interest. It was never an issue.

Q: Are there any documents that Florida state would possess regarding your work with RJR, that you can think of?

A: Yes. I gave all of - most of my - I gave my data to some of my students. I gave my early manuscripts to many people in the department so they could review it, give me feedback. During the course of doing my research, I would consult with a number of individuals in my department concerning their views on different measures and designs.

Q: Who was it in your department that you consulted with?

A: It was a - I talked to them, interacted with them. Ron Goldsmith, for example, would be one.

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Q: Anybody else?

A: Yes. A Dennis Craddock.

Q: Anyone else?

A: Yes. Charles Holfaker.

Q: Anyone else?

A: I don't - I gave it to anybody who would be interested, so I don't - there could have been some others.

Q: Any of those three folks still at Florida State University?

A: They all are.

Q: Do you have any contact with them since you've left?

A: Yes.

Q: You stay in touch?

A: Yes.

Q: Okay. Did you use the university facilities for any of your RJR research?

A: No.

Q: When was your last official day at Florida State University, if you remember?

A: I don't remember.

Q: It wasn't August of '95?

A: Yes. I don't remember the - there would be probably two dates of official, I guess.

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One is when I tendered my resignation and specifically gave a date when I was leaving. The other, that would be a little later, is in terms of how long my - like health coverage and some other things. It's hard to say when an official date is but I do know that I had health coverage through the end of the year, I believe, or at least maybe through October.

Q: What was your reason for leaving Florida State University?

A: One is professionally a better opportunity for me, I think overall. Second of all, it was an opportunity for my wife and I to live and work in the same city, or at least close to that same city. She was teaching at Auburn University and the travel became very difficult. We wanted to have a family and just didn't think that that particular situation in which we had to travel that way and she had a job in Auburn and I was in Florida State were conducive to that. We didn't want to do that. So I was going to be probably leaving somewhere and had an opportunity to go to a fine institution.

Q: I can't blame you. Your wife - and correct me if this is wrong. I looked on the

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Griffith University home page - is on the staff in the hotel and restaurant management section?

A: No.

Q: Is that incorrect?

A: No. What it is, is a school that incorporated marketing management. I think it's a faculty, called BHM or something, and in there is marketing and management and there's finance and accounting.

Q: Okay. That helps. I was trying to figure out what your wife was doing in the hotel and restaurant management.

Before you left Florida State University, did anybody ever inform you - anybody at FSU or any other state employee inform you you would not be able to continue your work for RJR -

A: No.

Q: - because of your responsibility to the State of Florida?

A: No.

Q: Do you know when the State of Florida filed their lawsuit against the tobacco industry?

A: No.

Q: All right. I'm going to represent to you it was February 21, 1995. Do you agree that

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upon the filing of the State of Florida's lawsuit, a clear conflict arose between your work for RJR and the interests of the state?

A: No.

Q: Explain that to me.

A: Well, I wasn't working against the State. As a matter of fact, I had done a member of expert witness jobs for the State. I think this is good research. It's research that is important in terms of its particular issue. I certainly don't believe it's in conflict of interest. I mean, if there is accurate information that comes up that runs counter to what they believe, I would hope that they would look at it and evaluate it professionally.

Q: If you were still a professor at FSU, would the conflict of interest rules for that university prevent you from testifying as an expert witness against the State of Florida?

A: I don't know.

Q: Okay. Fair enough.

A: It had nothing to do with my moving.

Q: Now, I'm not going to attach this because there's just a couple things I want to ask you about this.

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A: Are we finished with that?

Q: Yes, we are.

MR. ATLAS: What is that?

MR. ANGELOVICH: This is a Griffith University Staff Handbook. I'm sorry, man, I ran out. No, you can have that.

MR. ATLAS: All right. Thank you.

Q: (By Mr. Angelovich) I'm going to hand you a copy of the portion of the Staff Handbook that I obtained off the Internet for Griffith University. That is the university where you're currently employed; is that correct?

A: That is correct.

Q: I thought I had you in here somewhere. Let me take a look. Actually, this is what I wanted you to take a look at. I only have one copy. That's just an indication that you are the head of the school of marketing; is that right?

A: Yes. I stepped down as of the first of July.

Q: Why was that?

A: Well, I really was having a hard time doing a lot of research they wanted to do. I

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enjoyed being head of school, but one of the things that a professor does there is to help in terms of doing the research profile. So I asked a good friend of mine, who I hired earlier that year, to take over.

Q: It says under your current research project, Investigating the influence of using cartoon trade characters in advertising to three to six-year-olds. Is this the research that's leading to your article that's going to be published?

A: No. I think somebody updated it. I had heard that they updated all of our web page just a little while ago and this would probably be part of – this part is what used to be on the web page.

Q: Okay.

A: So that's a little out-of-date.

Q: I got this off the Internet three days ago.

A: Right. I haven't reviewed it.

Q: On the second page under referred articles, the second one there is Staughn Katherine and Richard Mizerski, Deception by Admission, so on. Is this the article that we're

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talking about?

A: That's correct.

Q: Okay.

MR. McDERMOTT: I believe it's refereed articles.

MR. ANGELOVICH: I'm sorry. I thought it was a typo.

Q: (By Mr. Angelovich) I want to make clear that that is the article that is forthcoming –

A: That is correct.

Q: – and that you're going to get me a copy of.

A: Yes. But this would not be my vitae.

Q: I understand.

A: I really haven't reviewed this.

Q: And I'm not – that's why I'm not even attaching it. I don't want to make that representation.

Now, what is your current research project, if this is not correct?

A: Currently I'm doing actually quite a few of them. One of them I'm looking at right now is the use of – or potential differential use of various kinds of sales promotion on user

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categories, like heavy users verses light users. I'm looking at frozen novelties and candy. I'm also doing some work in looking at compulsive consumption, sort of review of the literature and the marketing effects of that.

I'm doing stuff of stock-outs, the impact of stock-outs on – or out-of-stock conditions on long- and short-term brand share, with my wife. I'm doing a study – finishing up a study right now with someone on how different ethnic groups and their ability to be fluent in English affect how they process advertising.

Q: Okay.

A: But I've got a whole bunch of things going on.

Q: A lot of irons in the fire?

A: A lot of irons. In this initial – we had one of the first web pages, so we just – at that point, which was when I first came there. I think that's important to bring up is because I wanted to let people like Griffith University know the kind of research I was doing. As a matter of fact, my presentation – professors are asked to do a presentation – was on the Joe Camel research.

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Q: Okay. Did you prepare any documents for that presentation or did you just present off your articles?

A: Presented off my article.

Q: So there wouldn't be a writing that we could obtain regarding that presentation specifically, other than notes taken by your students?

A: Yeah. I don't remember. I handed out some iteration. I had interviewed in January of '95, I believe, I think around that time, and so this is before I actually got an acceptance from the Journal of Marketing. So I was probably handing them some iteration of what ultimately became the Journal of Marketing article.

Q: Fair enough. Now you stated that you think that you've spent about 300 hours year-to-date on the Mississippi, Florida, Texas, and California tobacco lawsuits?

A: Yes.

Q: Is that correct?

A: That's correct.

Q: When you – I assume you submit billing records to these lawyers for the time that you've spent; is that correct?

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A: That is correct.

Q: And does that show the days when you spent that time?

A: I believe so.

Q: Okay. Now, do you submit these bills to the folks at Griffith University –

A: No.

Q: – is that required? Okay. If you would turn real quick. As I said, I'm not going to mark this as a deposition exhibit. I have provided a copy to opposing counsel so they do have one for their use. On about the sixth page there is a heading called Personal Outside Work. It's small and in the left-hand corner, so you need to – did you find that page?

A: Personal Outside Work at the top?

Q: Yes.

A: Uh-huh.

Q: Okay. I actually want you to turn to the next page. Down at the bottom there's a section entitled Recording of Personal Outside Work. And, if you would, just read that briefly. It's not real long. But if you could read that section, I would appreciate it, then I want to

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talk to you a little about that.

A: "A staff member who wishes to enter into an arrangement involving personal outside work other than the type of arrangement specified in the Rationale" – rationale is with a capital "R" so presumably that's the heading – "will register the activity with the head of element before final commitment is entered into. This application will be in writing and will be set out, the work, its nature, responsibility, and direction, the form of contact, if any, and the statement of the relationship, the requirements set out and the nature of personal outside work and the time which the personal outside work is likely to involve," period.

Q: Okay. Did you submit such an application?

A: Yes.

Q: Okay. Can I have a copy of it?

A: Yes. I believe – if I have it I will certainly send it to you.

Q: Now it says, "the form of the contract, if any." As I understand your testimony earlier, there's not actually a written contract between you and these lawyers or RJR; is that a

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correct statement?

A: That is correct.

Q: Who is the head of element for your – does that depend upon your department?

A: I would have been the head of element, but I submitted mine to the dean and to the vice chancellor, who is – functions pretty much as the head – he was the president of the university.

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They call it a vice chancellor or [10] Q: You anticipated my question. I was [11] going to ask if you approved your own form.

[12] A: No. Again, I sent it to the dean and [13] I sent it clearly understanding that that was [14] important to do, and I asked all of the people in [15] my school to do the same.

[16] Q: Okay. Now just above that on Maximum [17] Amount of Personal Outside Work, actually it's on [18] the – it's right above Recording of Personal [19] Outside Work.

[20] A: Uh-huh.

[21] Q: "Personal outside work will occupy the [22] time equivalent of up to 13 days per quarter, [23] whether weekends or weekdays." Did I read this [24] correctly?

[25] A: Yes. This is new. The contract in"

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[1] which – because I have a contract.

[2] Q: With the university?

[3] A: That's right. The contract was in the [4] earlier iteration which allowed, I believe, one [5] day a week. And you could certainly work on your [6] weekends or they give you 20 working days a year.

[7] Q: Okay. So you had a contract with the [8] university that has different specifications than [9] this?

[10] A: It's based on a different – once [11] again, this is a union contract and these are [12] different whenever the new union contracts come [13] in. Mine was a previous contract; previous time [14] and, presumably, specifications.

[15] Q: Well, Dr. Mizerski, if you would be [16] kind enough, I would like to get a copy of your [17] contract with the university and whatever [18] guidelines were in effect at the time that that [19] contract was entered into, if you can provide one [20] of those for us.

[21] A: I will attempt to provide you that.

[22] Q: I appreciate that. [23] Do you know what the smoking policy at [24] Griffith University is?

[25] A: No smoking in any of the buildings.

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[1] Q: Okay. Are you aware it's also [2] prohibited within three meters of air intakes of [3] external doors, open windows, ventilation louvers?

[4] A: No, I wasn't aware of that.

[5] Q: Okay. Basically you can't do it in [6] the buildings; is that right?

[7] A: Yes.

[8] Q: Okay. I think we have time to get [9] through a few more things before we take a lunch [10] break. If you would locate Deposition – I will [11] find it for you. Deposition Exhibit Number 3, [12] which is the – your disclosure that was provided [13] to us by your lawyers here in Washington.

[14] Under subheading 3," the following [15] documents" – on the first page – "upon which [16] Dr. Mizerski may or will rely to form the opinions [17] he intends to offer at trial." Now, these were in [18] addition to the ten boxes of documents that were [19] provided separately. Tell me just briefly – and [20] I will allow you to answer, but I will tell you, I [21] am looking for a brief answer, – how the articles [22] form a basis of your opinion.

[23] A: Well, I'm always looking to the latest [24] literature. And I found it very interesting that [25] there have been some recent studies that I think"

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[1] are very important in terms of people [2] understanding the impact of marketing or lack of [3] impact on marketing in this whole aspect of [4] consumer packaged goods, products that are in [5] mature stage of the product life cycle and [6] cigarette smoking.

[7] Q: Okay. So documents 3 (a) through (g) [8] relate basically to those areas? This is the most [9] recent literature that you found on those [10] subjects?

[11] A: Well, as I said, I'm also putting [12] together my subject outline for what I'm going to [13] be teaching shortly, and that requires me to get [14] into the literature since we're talking about [15] readings. And yes, it's a course of not only [16] doing this but also in terms of just teaching [17] students about what's happening in consumer [18] packaged goods in other areas. You can't have [19] something that's ten years old. I like to update [20] as much as possible. I thought these were very [21] good articles in general and that they were useful [22] in terms of potentially discussing topics in this [23] litigation.

[24] Q: Okay. The next category is a list of [25] additional documents which you may or will rely in

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[1] forming the opinions you may offer at trial. And [2] these are – I would call these the Texas-specific [3] documents. Many of the documents relate to Texas [4] Department of Health studies and that. How [5] recently have you reviewed documents numbered (1) [6] through (11)?

[7] A: Well, I haven't actually received [8] these. I've had some discussions with the [9] attorneys about the environment in Texas. I [10] thought it would be important to be able to [11] discuss what they're doing in Texas, to what [12] extent they're enforcing various things, any kind [13] of public information that is provided.

[14] Q: What did your lawyers tell you about [15] the environment in Texas?

[16] A: Well, it's not so much – I don't [17] remember them telling me anything really about the [18] environment in Texas. I think what was discussed [19] is what kind of information is available out [20] there. This would be the kind of information that [21] would provide some evidence, because I'm not going [22] to – even though I certainly have trusted the [23] attorneys, it's very important for me to take a [24] look at the documents. These are documents that [25] would sort of deal with those areas.

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[1] Q: Do you feel like you should have [2] looked at these documents before giving your [3] expert disclosure in this case?

[4] A: No,

[5] Q: You don't anticipate that these [6] documents will affect your opinion in any way?

[7] A: It would depend upon what the other [8] experts in the opposing – your experts say.

[9] Q: Okay. So these documents I guess, [10] are more or less rebuttal for rebuttal-type [11] information?

[12] A: Potentially, but I think it's [13] important also for me to see what these documents [14] say.

[15] Q: Okay.

[16] A: I mean, I don't – I don't see how [17] this is going to affect my view of how the [18] marketplace works and the issue about the impact [19] of marketing activities on smoking, but I think it [20] would give me some additional information about [21] the social environment and socialization agents in [22] that area.

[23] Q: Okay. I understand from your [24] Mississippi and Florida depositions that you've [25] reviewed the – and correct me if this is the

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[1] wrong title: California Behavioral Risk Factor [2] Study?

[3] A: Yes.

[4] Q: Is that correct?

[5] A: That's correct.

[6] Q: And that you've reviewed that data and [7] that data forms, in part, the basis of some of [8] your opinions; is that correct?

[9] A: In that particular case, yes.

[10] Q: Okay. My understanding from that [11] deposition is that you – I think it's out of the [12] Mississippi deposition, you had indicated that you [13] were going to do a more detailed study?

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[14] A: That's correct.
[15] Q: Detailed analysis of that data?
[16] A: That's correct.
[17] Q: Have you done that?
[18] A: I've done some of it.
[19] Q: Okay. What part of it have you done?
[20] A: I've done some - first of all, [21] transform the data into a format that can be [22] analyzed. That was the largest part of what I [23] did. Took a large compressed SAS file and put it [24] into an SPSS format and have run some descriptive [25] statistics to verify the data and the

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[1] transformation.
[2] Q: Okay. Would the useful format that [3] you put the data in be more helpful than the disks [4] that I got?
[5] A: Well, it depends. If you use SAS, [6] then those are ready to roll. If you use SPSS, [7] then you have to transform them. Probably equal [8] number of people use that. In Australia, a little [9] bit different than the United States. It is very [10] difficult to transform to SAS to SPSS. Had I been [11] in the U.S., I think it would have been done very [12] quickly. But neither one of the software [13] providers provide a way of doing that. So I had [14] to go through third parties who hadn't done that [15] before. So it's been a very difficult procedure. [16] But I would say if you use SAS, that would be [17] very, very helpful for you just the way it is.
[18] Q: Okay. Has the time that you've spent [19] transforming the data and other matters been [20] funded by RJR?
[21] A: Yes.
[22] Q: At a rate of $250 an hour?
[23] A: No. It would depend on who did the [24] transformation of the data. I had a - we were [25] able to find one individual who had some

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[1] experience who transformed some of the data. And [2] I don't remember what the payment was, but it [3] would probably be more like $30, Australian, an [4] hour.
[5] Q: When you start to working with the [6] data, will RJR pay you at a $250-an-hour rate?
[7] A: If I work on it.
[8] Q: All right.
[9] A: But I would probably have - it would [10] depend upon what's being done. I specify what [11] analyses I want. But doing the analysis usually [12] isn't worth $250 an hour. So I would either have [13] a student do it, might have my wife do it [14] depending - she's pretty good with a computer.
[15] Q: What does your wife charge?
[16] A: Excuse me.
[17] Q: What does your wife charge an hour?
[18] A: I think she charges a hundred and a [19] quarter, something like that.
[20] Q: What do your students charge an hour?
[21] A: About $30 an hour.
[22] Q: What is the focus of your review of [23] this California study going to be?
[24] A: The focus would be looking at the [25] structure of the interview, the relationship of

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[1] the questions, and potentially testing different [2] hypotheses about why individuals would respond in [3] certain ways.
[4] Q: I guess at some point you're trying to [5] determine whether the test or the study was a [6] sound study?
[7] A: Well, not - it would depend upon the [8] research question. The methodology would be one [9] thing, but what sort of interpretation would you [10] make from the results. These studies have, you [11] know, in excess of 5,000 people. We're talking [12] about in excess of 200 questions each. And the [13] way things are asked differs by study, differs by [14] year, differs by age.
[15] Q: Okay.
[16] A: So I wanted to be much more sort of up [17] to date in terms of how these questions were asked [18] and how they match in with other surveys that have [19] been done.
[20] Q: Okay. Now, I will tell you I [21] personally have not got a chance to look at what's [22] on these disks and go through them. Can you, by [23] looking at the writing on there, tell me basically [24] what each disk contains?
[25] A: Each one of these has a - I really

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[1] couldn't off the top of my head other than [2] obviously this is '90 California, '93, these kinds [3] of things. Probably if you would open up these [4] files they would identify.
[5] Q: Okay. Do you have - let me ask you [6] some real quick questions. You're correct that [7] the first number of these have the initials CAL on [8] them. Then, Doctor, we have a initials CABRFS [9] then a date. Do you know what -
[10] A: There would be - what you would have, [11] there would be some documentation that would be on [12] here that would tell what it would be.
[13] Q: Okay.
[14] A: If you opened it up it would tell you [15] the title. Some of them may even have the [16] question. Some may have the questionnaire.
[17] Q: I'm not going to get a lot by looking [18] at the little sticker on the front of the -
[19] A: No. No. Always tend to be - that's [20] one of the things about computer people, they tend [21] to be very terse.
[22] MR. McDERMOTT: Labels not in the [23] output.
[24] Q: (By Mr. Angelovich) I want to go back [25] and talk to you just a little bit about these

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[1] theories and make sure I get them right, the [2] reasoned action model, then talk to you a little [3] bit about -
[4] A: It would be the theory of reasoned [5] action. So - there are many models within that [6] general construct.
[7] Q: Okay. What models are there?
[8] A: Well, there's the Fishbein model.
[9] Q: Is that the one that we talked about [10] before?
[11] A: Well, the Fishbein model has a number [12] of components of it. There would also be a number [13] of others. The dual-stage model, to some extent, [14] takes that into effect. There are various [15] hierarchy of effects models.
[16] Q: What do you mean by hierarchy of [17] effects?
[18] A: The stages people go through in terms [19] of ultimately make a decision.
[20] Q: Would that be the order in which they [21] go through them?
[22] A: Yes.
[23] Q: So in some certain situations, I know [24] the one we talk about earlier, you talked about [25] having a cognitive level, you have some awareness

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[1] of a product, kind of a learning stage, then you [2] develop a feeling, then you act one way or another [3] about that?
[4] A: That's one way of viewing it, yes.
[5] Q: Now, are there other models that, say, [6] impulse buying, you do something first then you [7] learn about it then you have a feeling or you do [8] it then you feel it then you learn about it? Are [9] those all alternatives of the model?
[10] A: Yes. Probably wouldn't characterize [11] it as impulse, but it might be low-involvement [12] purchasing, alleged to have different format, yes.
[13] Q: As it relates to the purchase of [14] tobacco products, which model do you adhere to?
[15] A: It would depend.
[16] Q: And what would it depend on?

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[17] A: Well, it would depend on the stage of [18] the product, where it was, the kind of product it [19] was, was it a consumer packaged good or not. In [20] addidon, it would also depend upon the stage that [21] the potential consumer was in in terms of their [22] interaction with them.
[23] Q: All right. Let's talk about a [24] cigarette.
[25] A: Uh-huh.

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[1] Q: What model do you rely on in your [2] review of the -
[3] A: It would depend upon the stage of the [4] interaction with that particular product.
[5] Q: What do you mean by stage?
[6] A: People don't just use something like [7] cigarettes. In fact, there are adoption [8] categories for all products out there. But [9] cigarettes, as a product category, have been [10] around for over a hundred years. So we're talking [11] about a product category that is in its maturity [12] and probably decline stage.
[13] Q: How does that affect what model you [14] use, the fact it's in a mature stage?
[15] A: Well, it affects certainly the aspect [16] of influence or no influence of various marketing [17] factors and how those marketing factors might have [18] an influence or no influence on the consumer. [19] Then, of course, the consumer themselves or [20] potential consumers go through stages. Not the [21] introduction, you know, growth, maturity, decline [22] stage, they go through different stages as they [23] move through their use of the product or choose [24] not to use the product, then ultimately through [25] their quitting of the product or disadoption.

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[1] Q: Okay. Well, then tell me about early [2] in their use of the, product kind, of halfway [3] through and near the end of the their use of the [4] product if that's because - well, for whatever [5] reason they're coming to the point where they're [6] end using the product, what model of the theory of [7] the reasoned action do you think applies?
[8] A: I really don't think the theory of [9] reasoned action really applies when we're talking [10] about individuals who are in the - well, probably [11] the becoming stage. And there's mixes, but I [12] would say certainly becoming in the maintenance [13] stage and there wouldn't be a great deal of what [14] we would call the reasoned action model. [15] Reasoning may go on, but it's not at the cognitive [16] level that's suggested or predicted by the [17] researchers in that area.
[18] Q: Okay. So not really in use in the [19] early stage?
[20] A: Yes. In the early stages
[21] Q: Okay. Is -
[22] A: Well, let's just say that that's a [23] theory.
[24] Q: Okay.
[25] A: I personally no longer subscribe to it

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[1] in large part.
[2] Q: Why is that?
[3] A: Because most of the products out there [4] that we deal with are products that individuals [5] have used for quite some time, where they become [6] introduced to it at a very young age, and probably [7] are products that are frequently purchased, that [8] are, as I say, in the maturity stage, that there [9] may be routinized behavior in terms of the use and [10] purchase of it. I don't think - although there [11] have been low-involvement models introduced that [12] have tried to incorporate the theory of reasoned [13] action, in general it does not appear to predict [14] very well.
[15] Q: Well, if there's low involvement, is [16] it reasoned action at all? Does a low-involvement [17] model even fit within the theory of reasoned [18] action?
[19] A: Sure.
[20] Q: Because there's some reasoning going [21] on at some level?
[22] A: Well, it's called the reason action [23] model. It doesn't talk about rational. Reasoning [24] simply means it's a cognitive process. I think [25] it's probably a term of art that may mislead the

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[1] layman as to exactly what it's dealing with.
[2] Q: Have you reviewed any internal [3] correspondence from RJR or other tobacco companies [4] or their advertisers to indicate whether or not [5] they function or subscribe to the theory of [6] reasoned action?
[7] A: No, I haven't.
[8] Q: Okay. Do you have an opinion as to [9] whether or not they do in their advertising?
[10] A: In their advertising?
[11] Q: Yes. I mean, is that something you [12] can determine by looking at an ad?
[13] A: I don't think advertisers overall [14] really kind of - or people who are in the [15] profession think a great deal of these models. [16] This is more in the research area, and it might be [17] information that's provided in some format that [18] could arguably be called something that would [19] reflect or be somehow associated or just proved. [20] reasoned action. Again, reasoned action just [21] means it's a cognitive process. People go through [22] some weighing, may do some counter-argue, may [23] not. Some people even now suggest that reasoned [24] action doesn't need conscious processing. So it's [25] a very ambiguous term, very ambiguous area.

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[1] Q: Okay. So those people in the actual [2] business of marketing are more concerned with the [3] result rather than the academics behind that [4] result; is that a fair statement?
[5] A: That would be true.
[6] Q: Okay. It seems to me that you kind [7] of - you have two ends of this reasoned action. [8] You have a situation where you learn as much as [9] you can about a product before you make a [10] decision, maybe - well, my house, I tried to [11] learn everything I could about the neighborhood, [12] so and so, you know, my car. Then you have down [13] at the other end where your purchases are [14] pretty much based on emotion. Is that the spectrum of [15] the model?
[16] A: No.
[17] Q: Okay. Explain for me -
[18] A: Which model?
[19] Q: Theory of reasoned action. I know [20] there are many models in there. But it seems that [21] you have - either a purchase is going to be based [22] on perhaps - I know you don't call it an impulse, [23] based on a low involvement or there's going to be [24] a high involvement involved in the purchase?
[25] A: Involvement is also a very

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[1] controversial area. I think we're increasingly [2] seeing that - that is, interesting theoretically, but [3] it's very difficult to use in the trade, I mean. [4] We use it very roughly. I don't want to use [5] things in a very rough layman's way unless you ask [6] me to. But I wouldn't say the continuum really [7] runs that way. There have been a lot of [8] theories. Theory of reasoned action came about [9] largely maybe about 1960 and has gone through its [10] own product life cycle that peaked probably [11] somewhere in the '70s and has had sort of a [12] downward slide over the years. It gives us some [13] insight to certain product categories out there. [14] And maybe at some stage they may have been at. [15] But to suggest there's some continuum I don't [16] think would be an appropriate categorization of [17] the theory.
[18] Q: Fair enough. Have you done a historic [19] review of tobacco marketing through the years?
[20] A: I have done some of that. I am [21] continuing to do that.

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[22] Q: Did you begin doing that review as [23] part of your being retained as an expert in [24] tobacco litigation?

[25] A: No.

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[1] Q: When did you begin your review of the [2] history of tobacco marketing?

[3] A: I don't remember the year, but it [4] would probably be when I first started teaching [5] Ph.D.s about consumer behavior and how it affects [6] promotion.

[7] Q: Is that the '80s?

[8] A: Probably the '70s. I – there has [9] been some early work that's really classic work in [10] the active advertising on consumers. I have over [11] time become more and more appreciative of the [12] historical context of the research and products [13] and those kinds of things. And so I have [14] integrated that probably since when I worked at [15] Arizona State, so that would probably be the [16] mid-seventies or so.

[17] Q: Okay. How do you plan on continuing [18] that research? Are you going to continue that [19] study?

[20] A: Cigarettes are a fascinating product.

[21] Q: Okay.

[22] A: I will anticipate if everything [23] stopped tomorrow that I would continue dealing [24] with that because that, as well as a number of [25] other branded products, are very interesting and

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[1] gives us some insight into how things operate in [2] the marketplace.

[3] Q: Did – is RJR funding that review?

[4] A: No.

[5] Q: Okay.

[6] A: Well, I mean, I'm doing a review on my [7] own. To the extent that I would use something [8] concerning that with litigation, it's not clear at [9] this point. But they are not funding me to do any [10] kind of historical review.

[11] Q: Per se?

[12] A: On my own, no.

[13] MR. ANGELOVICH: Okay. Let's go [14] ahead and break for lunch.

[15] MR. McDERMOTT: Sure.

[16] MR. ANGELOVICH: Does that sound [17] fine, Doctor?

[18] THE WITNESS: Sure.

[19] THE VIDEOGRAPHER: Off the video [20] record.

[21] (A recess was taken.)

[22] THE VIDEOGRAPHER: On the video [23] record.

[24] Q: (By Mr. Angelovich) Dr. Mizerski, [25] we're back after a lunch break. Prior to taking a

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[1] break, we talked a little bit about your [2] historical review of tobacco marketing. I think [3] we've pretty much covered that so I want to move [4] on to something a little bit different.

[5] Doctor, would you agree with me that [6] as we sit here today, RJR and, in fact, the entire [7] tobacco industry, has a certain number of [8] customers using their products?

[9] A: Yes.

[10] Q: And, Doctor, would you agree with me [11] that if no one new starts to smoke the number of [12] customers will decrease as current smokers die?

[13] A: Yes.

[14] Q: Would you agree that the result then [15] would be a shrinking customer base?

[16] A: Yes. It's shrinking right now.

[17] Q: Now, I don't want to talk to you [18] specifically how it may or may not occur, but [19] would you expect the tobacco companies to want new [20] customers? That is, persons to begin and continue [21] smoking?

[22] A: I think it – would they want that?

[23] Q: Would that –

[24] A: That's part of their marketplace.

[25] Q: That would be a desired result?

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[1] A: That would be.

[2] Q: And I guess the reason is because if [3] you didn't have new people taking up smoking, [4] after a few generations there wouldn't be anybody [5] smoking at all?

[6] A: Yes. In that unlikely event, yes, [7] there would be no smoking, if that could happen.

[8] Q: Now if a business had a way to attract [9] new customers, would you expect that that business [10] would utilize that?

[11] A: It would depend if it was legal or [12] not.

[13] Q: Let's assume it was legal. Would you [14] expect them to utilize it?

[15] A: Yes.

[16] Q: And if it was –

[17] A: It also would depend beyond whether it [18] was legal or not. I think it would also depend [19] upon what impact it might have on the long-term, [20] you know, strategy of doing business. If in the [21] long-term it worked to their detriment, then I [22] wouldn't expect them to do it.

[23] Q: Would you expect them to implement [24] either techniques or procedures that were illegal [25] to gain new customers?

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[1] A: I wouldn't expect it, no.

[2] Q: Would you find that offensive?

[3] A: Well, it depends upon the procedure [4] you're talking about.

[5] Q: Well, Doctor, are there procedures [6] that you're aware of that are illegal that you [7] would not find offensive?

[8] MR. McDERMOTT: Counsel, was your [9] question legal or illegal?

[10] MR. ANGELOVICH: Illegal.

[11] A: I'm sorry. Okay. If they were [12] illegal – well, offensive, I probably wouldn't [13] agree with them.

[14] Q: (By Mr. Angelovich) Okay.

[15] A: For example, if, in fact – well, [16] there could be situations in which it may be [17] illegal. I'm not saying it would happen, but [18] there may be. It's conceivable somewhere there [19] are some statutes where it would be illegal but we [20] might all believe, you know, it would not be that [21] big a deal, certainly wouldn't be something you [22] would be offended by.

[23] Q: Okay. Would selling cigarettes or [24] intending to selling cigarettes to minors and [25] targeting minors for those sales, would you

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[1] consider that to be illegal?

[2] A: Yes.

[3] Q: Would you consider that to be [4] offensive?

[5] A: Yes.

[6] Q: Okay. Now, not talking about minors [7] at this point, just talking about smokers in [8] general, if RJR and other tobacco companies could [9] attract new customers, would you anticipate them [10] to utilize techniques to do that?

[11] A: New customers? They do that in terms [12] of brand switching.

[13] Q: Okay. I'm going to talk to you a [14] little about the brand switching and the brand [15] loyalty and your opinions on that. My question is [16] this: If RJR or any other tobacco company [17] believed that certain types of advertising would [18] influence persons to begin smoking, regardless of [19] whether you think that it has that effect or not, [20] would you expect them to utilize that?

[21] A: Well, I can only talk from my [22] experience with people at RJR. My belief, it [23] would not at RJR. I can't speak about, you know, [24] very early or other companies or anything else. [25] My discussions with people would be that they

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[1] wouldn't do that. I would not expect that.

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Q: They're not interested in influencing a person to begin smoking –
A: No.
Q: – is that what your testimony is?
A: That's right.
Q: And who provided you with that information?
A: Well, I've had a chance to discuss just general areas, talk about things, talk about – I would ask, "Do you smoke?", you know, "If you smoke, don't you worry about your children seeing it and do you think they should smoke?" I mean, just generally over the last few years, and I've got a distinct impression that they are not interested in getting nonsmokers to be smokers.
Q: Even though they're in the business of manufacturing and selling tobacco products?
A: That's right.
Q: Okay. Do you know, Doctor, from the tobacco industry's perspective what is the best time for someone to begin smoking? What they consider to be the best time for somebody to begin smoking?

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A: I don't think I've heard anything from the tobacco companies: Best time for them to begin smoking? They begin smoking when they begin smoking. Usually it's when they are – talking regular smoking, 18.
Q: Are you looking for someone who started when they're 60 so maybe you get 15 years of purchasing out of them, or do you think it's more beneficial to have somebody who starts when they're, say, 15 years old so that you get 60 years of purchasing out of them?
A: I don't think they're interested in that nor should they be interested in 14 15-year-olds. That's going to happen and we can see worldwide it's going to happen, whether there's advertising or promotion or anything else.
Q: Okay. Let's say 18-year-old and they get 60 years of purchasing out of them. What do you think they have more of an interest in, or do you think they make a distinction?
A: I think they would like to get both.
Q: Okay. If they could only have one, who do you think they would prefer to have?
A: It depends upon the usage categories and a lot of other things that would go into it.

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If we're talking about products in general since I don't think tobacco is any different, a 60-year-old is going to be a heavy user. It's a smaller pool. It kind of depends upon what happens over the next new years. Appears to me young people are going to be dropping off quite quickly in terms of their uptake, or a lot of them won't
Q: In tobacco –
A: That's correct.
Q: – regarding that? Okay. Now, you stated a moment that you thought – or it was your opinion, based upon the information that you've read, that people begin the uptake process around 18?
A: I said smokers. You are saying when do they become smokers, and that would be – there's a lot of definitions of what a smoker is, but the definition of a regular smoker, we're talking about 18, 18 plus.
Q: Tell me what your definition of a regular smoker is.
A: Talking about daily smoking.
Q: So you have experimentation, those sort of processing going on prior to the age of

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18?
A: That's correct.
Q: In your opinion, what age group is targeted by the Joe Camel ad campaign?
A: We're talking about 21 to 24 and up.
Q: Have you seen any statistics that indicate that after starting the Joe Camel ad campaign, RJR's percentage of the 15- and 16-year-old market went up significantly?
A: I saw one study on that.
Q: Now, is it possible for an ad campaign to serve both to increase brand loyalty and to attract new users to the product? And don't –
A: There's a special case where that could happen.
Q: And don't limit yourself to tobacco.
A: Right. I wouldn't. No.
Q: Tell me what –
A: That would be the introductory stage of the product life cycle. That doesn't do it in and of itself. But when we're talking about the introductory stage of product life cycle for something like consumer packaged goods, it is conceivable to get people to do – not only get them aware, but also to change brands, maybe

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introductory because the introductory normally has only one brand, so – we're talking about, probably, the growth stage.
Q: In your Missouri – I'm sorry. Missouri – Mississippi deposition, you were discussing what factors influence whether advertising is directed towards children. And you stated what the product is, what forces are at play and where the product is in its life cycle.
A: Yes.
Q: Does that sound like a statement you would have made?
A: Could be.
Q: Okay. What does the forces of play refer to?
A: And the question is? I mean you read me that but what was the question I was responding to?
Q: Factors influencing whether tobacco advertising influences children.
A: That was the question I was given?
Q: Well, let's find it specifically.
MR. McDERMOTT: If you have the transcript here, that might be helpful.
MR. ANGELOVICH: I do.

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Q: (By Mr. Angelovich) Starting at the top, "Do you think that a kid who has two parents who smoke would be inclined to notice cigarette advertising more than a kid who is not around people who have smoked?
Answer: 'I haven't seen any evidence of that.'
Question: 'Do you say that you don't think advertising has any influence at all?'
Your question is: 'On any product?'
Her question: 'Yes.'
A: Now wait a minute. Can I follow this too?
Q: Yes, sir.
A: Good.
Q: Actually, after her question 'Yes,' that's the answer I'm curious about. It says, "Well, once again it depends upon what the product is, where the product is in the life cycle, the forces at play, the availability of it."
A: Yes.
Q: And my question is, In that context, can you please give me a little bit better idea of what the forces at play are?

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A: Sure. Well, do you understand what the product is, that whole discussion of what that might be? All right. We'll assume you to.
Q: Okay. Why don't you make that assumption.

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A: Because there's quite a bit of detail there too as I said. The "it depends" is a very important criteria there because there isn't just one road map. It really depends upon a lot of factors. It depends upon the kind of product or service it is. Then, if course, the product life cycle.

Forces at play would be such things as social agents, the social environment, cultural factors, religion, peers, and siblings in the family, best friend, whether it is allowed in school, for example, to smoke or at school, or in close proximity to school. The village - sort of thinks that's okay. The socioeconomic factors, all right? So that's what I'm talking about in terms of forces at play. Public policy as well, to the extent. And that's a very important part is public policy. For example, is it such that there is - people are given tickets, you know, for smoking in public, or whether you can, you

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know, smoke in various areas might have some impact in terms of that.

Q: All right. Now, I want to concentrate first on product life cycle.

A: Uh-huh.

Q: I assume that that refers to the fact that through the course of a product's life in the consumer marketplace it goes through different cycles, or there is a cycle that it goes through; is that correct?

A: That's putting it simply, but yes. That's pretty much - it goes through stages.

Q: Okay. Without going into a lot of discussion, what are the stages that a product goes through?

A: Well, typically we look at the introductory stage. That sometimes is even broken up into various areas. Then there would be generally called the introductory stage - excuse me - the growth stage. Then you have maturity. That can be broken down to early, mid, late maturity. Then ultimately the decline stage.

Q: Does the decline stage, is that always followed by the disappearance of the product from the marketplace or just a very low presence?

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A: It would depend. It would depend upon substitutes. It may never ultimately disappear.

Q: Tell me, Doctor, in your opinion, and I don't need exact years, but the best that you can - first, let me ask you this: What stage do you contend cigarettes are in now in the product life cycle?

A: I would say they're in the either late maturity or decline stage.

Q: Can you tell me - or if you can tell me, please tell me, when in time cigarettes entered the mature stage?

A: Probably I would say in the '40s, maybe a little earlier.

Q: I assume 1940's, right?

A: Yes.

Q: Now, how does that affect whether the fact it's in a - that you categorize cigarettes to be in the end of the mature or late mature stage or in the decline stage, how does that affect whether advertising, in particular tobacco advertising, influences children? How does that affect that issue?

A: Well, it doesn't matter whether we're talking about tobacco advertising or advertising

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for any other consumer packaged good.

Q: Okay. Then how does the presence of a product in the late mature stage or decline stage affect how the advertising is going to be targeted?

A: We're talking about very - relatively small number of new users, okay? And also those new users were made aware of that probably very early in life. In fact, just having a young one now eight months old, I mean, I've seen her look at others who smoke. It's pretty spectacular kind of display. One finds out about that product very early in life; whether it's appropriate or not, as a matter of fact, but certainly what it is.

Also in terms of looking at product life cycle, there's a lot of work that suggests that it's really not feasible to get new users when you're talking about that stage, that promotion does nothing in terms of doing that. People who are aware of it already have been aware of it for quite sometime. Really the focus on your promotion really is to keep distribution. If it's not available, you can't buy it, you can't use it.

Q: Now how does that - some of the

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factors that you just talked about, few new users, those sort of factors -

A: New users as compared to the bulk of people who are out there, yes.

Q: How does that differ from the early stages? I mean, at the introductory stage I assume you also have few new users but you're trying to get more.

A: That's when you're getting a lot of people first aware of what the product is. Not only where it's aware, how to use it, where does it fit in with the life-style, where can you buy it. And indeed, one of the big jobs at that introductory stage is to line up distribution. How do we get it to people? How do people know where to go? How do we sell retailers on reasons to put our product, our brand in their product category where somebody else wants to have that space. The retail stores are a very, very competitive atmosphere. And if you don't deliver very quickly, somebody else takes your place. And increasingly, of course, that's happening in the whole tobacco area.

Q: When was tobacco in the introductory stage, or the cigarette as a product?

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A: Oh, 1880's, probably up until - look back at particular cutoffs there and look at distributions, but I would say probably 1880's, introductory stage. As you got competition, which was the growth stage, when you started getting branded competition, we're talking about soon after that in the 1880's.

Q: Okay. So it went from the introductory stage to the growth stage within a decade?

A: Yeah.

Q: Now, if you can, can you list for me - in this mature market hypothesis or theory, are there elements or factors that you look at? It sounds like you look at the number of new users. Is that one factor?

A: Uh-huh.

Q: What are the others?

A: Where they get the information about new - where they get information about the product.

Q: And by where, what do you mean? What type of -

A: How do they become aware of the product.

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Q: Okay.

A: You know, what are the social forces. Something like tobacco, we're talking about something that's been around for a log time. It is a very widely known product. There's a lot of information that comes out outside of the typical, you know, commercial area. Number of competitors. The distribution. A lot of people argue the kind of margins we're talking about at each of the manufacture level and the distribution level.

Q: Any others?

A: No. I talked about the - how widespread the nature of where you can buy it, the awareness, that kind of thing. Switching behavior. And a lot of

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the stuff at the store level, that you'll see over time are moving towards sales promotion, which in many ways is meant to hold that distribution.

Q: Do you believe that diminished profitability is an element of the mature market hypothesis?

A: It would depend on really the cost structure of the industry.

Q: Do you believe that – do you have

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anything to indicate that the tobacco industry has had diminished profitability since the cigarette entered the mature market in the 1940's?

A: I don't have any profitability estimates at this point. No, I don't have any extremely profitability – as I said, that's very much a structural aspect of the competitive atmosphere.

Q: Do you or don't you believe that diminished advertising spending is an element of the mature market hypothesis?

A: Well, it's a symptom. It's often associated, but it also depends on what year we're talking about, the aspect of increased sensitivity to the use of a promodion, for example. The whole area of sales promotion has really developed quite a bit over the last 20 years or so. So although they've had contests and sweepstakes and premiums since Cracker Jack, that kind of thing, the ability to judge the effects of all those things, and theories about them, have been fairly recent. Very anecdotal up until about 20 years ago.

Q: Would you agree or disagree that when you're looking at a product that's in a mature market, the advertising involving that product

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will specify the competitive brand from which volume is to be taken?

A: The advertising will specify?

Q: Yes.

A: The ad plan, the ads itself, or –

Q: Let's take them one at a time. The ad plan.

A: The marketing plan, the ad plan would be part of, typically, has – if they're doing a good marketing plan, who they're competitors are, of what group they're trying to take it away from.

Q: What about the advertisement itself?

A: No, not necessarily. In fact, there's some danger specifying who the competition is. There's a great deal of mis-identification that often happens. Really talking about competitive advertising here – or comparative advertising. Excuse me. Comparative advertising often is suggested as being very dangerous, particularly if you have large brands that you're competing against in that mis-identify who is doing the advertising then.

Q: Doctor, can you point me to any industry evidence that supports a classification of cigarettes as a mature market?

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A: Yeah, I think – you're talking about theoretical stuff? Your question was –

Q: No. I want to see industry evidence.

A: Industry evidence? I've seen things like, for example, the four A's look at that particular issue. I've seen academic research. I've seen other research that would be sort of in the commercial area that calls upon academic research that would note that it

Q: Is this going to be – are these documents contained in your disclosure?

A: I think so.

Q: Okay. Have you ever seen any documents from the tobacco industry, their advertisers or researchers, that indicate that the mature market classification is an element in their – that being the tobacco industry's strategic marketing analysis?

A: Well, people know it if you work in an industry, most industries are in the mature stage, as a matter of fact, particularly consumer packaged goods. That's a wide – it's kind of like if you went to your workplace, you say, "By the way, we do law." People look at you like – of course, that's part of our business. It's just

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part of understanding what your industry is all about.

Q: So you haven't seen any such documents?

A: In tobacco –

Q: Documents –

A: or any industry? or

Q: – from the tobacco industry.

A: I seem to remember discussions about that, but I couldn't really tell you any specific document. Whenever you're starting to talk about we've get to take share away from this one or another one, it's very clear what they're talking about is mature stage.

Q: I want to talk to you a little about peer groups. You just stated that that is one of the forces at play.

A: Yes.

Q: And I believe from reading your Mississippi and Florida deposition that you state that that is one of the factors that influences a child's decision to start smoking. Is that a fair assessment of your testimony?

A: Yes.

Q: Okay. Do you believe that the tobacco

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industry is aware that peer pressure influences a child's decision to start smoking?

A: Yes.

Q: I want to ask you about one ad that I came across in your disclosure. And I can't tell you that I know where this came from, because it was just in there.

MR. ANGELOVICH: Can you mark that for me, please.

(Deposition Exhibit 6 was marked.)

Q: (By Mr. Angelovich) Doctor, I'm handing you what's marked as Deposition Exhibit 6, which contain photocopies of what appear to be three advertisements. I have no idea the magazines these appeared in nor do I have any idea what the year is. The one I want you to look at is the hard pack ad regarding Camel cigarettes. Now in that ad there's more than just Joe Camel; is that correct?

A: Yes.

Q: And I don't know if – it looks like there's Eddie Camel, Floyd Camel, and I guess that's Bustah Camel?

A: Correct.

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Q: Now, is Eddie Camel Joe Camel's father?

A: I wouldn't know.

Q: Is it his uncle?

A: I don't know.

Q: Do you think it's –

A: I haven't really thought about it to be honest with you.

Q: Do you think those are his peers?

People who play in a band with him?

A: I really haven't thought about it.

Q: Okay. Doctor, do you think that a teenager, a teenager who would be influenced by peer pressure, could perceive Joe, Eddie, Floyd, and Bustah as members of a peer group?

A: I don't think they think about it that way, no.

Q: Do you think they might view that advertisement as their group of friends that hangs around together, whether or not they're sitting there consciously making the determination that this is a peer group?

A: These are a bunch of Camels. They're cartoon Camels. I think even

http://legacy.library.ucsf.edu/tid/auq07a00/pdf
http://www.industrydocuments.ucsf.edu/docs/fhhl0001

kids are smart [25] enough to differentiate. This is like a cartoon

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[1] you would see.

[2] Q: I agree.

[3] A: – don't read deep into that. I [4] understand some people may believe that, but [5] that's that whole cognitive thing, people [6] thinking – we're not Freudian psychologists here.

[7] Q: What's the impression the ad's giving?

[8] A: It's just – it's kind of interesting.

[9] Q: Just a group of Camels hanging out [10] together?

[11] A: Yes.

[12] Q: Okay. Do you think that's a peer [13] group?

[14] A: No, I don't think that's – not only [15] that, but they appear – they're old Camels.

[16] Q: Okay. I want to talk – don't want to [17] talk about the three articles that you've done on [18] Joe Camel. As I said, I think that was pretty [19] much covered in the other depositions. I [20] understand your positions on that. Have you [21] performed any analogous studies with any other [22] group other than three to six-year-olds?

[23] A: No.

[24] Q: Okay.

[25] A: Analogous studies?

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[1] Q: Well, similar studies using –

[2] A: About tobacco? –

[3] Q: Yes.

[4] A: – and Joe Camel?

[5] Q: Identical studies to the ones that you [6] performed with different age groups.

[7] A: No. I haven't done anything besides [8] the three to six-year-old on, you know, those [9] stimuli.

[10] Q: Okay. Did RJR specify the three to [11] six-year-old age group?

[12] A: They were interested in replicating [13] that study.

[14] Q: Okay. And that's because Dr. Fischer [15] dealt with the same age group?

[16] A: That's correct.

[17] Q: And so if you were going to I guess [18] counter or criticize Dr. Fischer's study, you [19] would want to use the same age participants that [20] he used?

[21] A: Well, yes. I think if you wanted to [22] show that, you know, whether it would show [23] anything, but just find out whether his results [24] were accurate or not.

[25] Q: Yeah.

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[1] A: Forget about the interpretation. [2] That's up to I suppose an individual. But to show [3] this, the raw numbers were correct or not, one [4] would need to replicate it in some way on the same [5] age group.

[6] Q: So it wouldn't do any good as far as [7] verifying the results of Dr. Fischer's study to do [8] 9 to 12-year-olds?

[9] A: Others have, but I wouldn't want to [10] copy what they did. I mean, we were particularly [11] interested in looking at the three to six.

[12] Q: Has RJR ever asked you to participate [13] with these other age groups?

[14] A: No.

[15] Q: You, I guess, have no interest?

[16] A: I don't. I do a lot of things. That [17] looks like I'm only doing tobacco, but I really do [18] a lot of other areas. That's what I'm actively [19] doing now.

[20] Q: Okay. You're not interested in seeing [21] how this cartoon trade character recognition [22] carries through as the child becomes older?

[23] A: I would be interested, but I think [24] people have done some work in that area already. [25] I think what needs to be done now is not only take

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[1] a look at things like advertising, but there's [2] probably more media anti-use of Joe Camel than [3] perhaps the pro use of Joe Camel as a brand [4] switcher.

[5] Q: Have you ever assisted in the [6] marketing of a product designed for children under [7] ten?

[8] A: Yes.

[9] Q: What was that product?

[10] A: There were some psychologists when I [11] was at the University of Cincinnati who was trying [12] to market some toys.

[13] Q: Okay. Now, are there premises that [14] underline – and I know this is a broad question. [15] If it's too broad to answer, you just tell me. [16] Are there premises that underline marketing to [17] young children under ten that are different than [18] marketing to adults?

[19] A: I don't think – under ten, if you've [20] got a much – pretty much younger than that. It [21] would depend sometimes at ten they would be [22] similar that you would do to adults. There would [23] be certainly some media differences.

[24] Q: As far as the timing or the placement [25] of your ads in certain magazines, the timing of

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[1] your commercials –

[2] A: Yes.

[3] Q: – is that what you mean by media [4] differences?

[5] A: Correct.

[6] Q: Well, at what ages – you said [7] ten-year-olds, maybe some of then are close to how [8] you would market to an adult.

[9] A: Well, you know, we would have the [10] whole concept, the nature of the product, a whole [11] bunch of other things. If we're looking at Corn [12] Flakes, you know, the use of the marketing of Corn [13] Flakes going to be similar to young people as it [14] would be to – let's be specific, people ten and [15] younger, as it would be to adults who were 18 and [16] up? There are a lot of similarities, as a matter [17] of fact.

[18] Q: Okay. Now, in the classes that you [19] teach, do you ask your students to create [20] marketing strategies, marketing plans?

[21] A: Yes.

[22] Q: Okay. Do you grade and evaluate those [23] campaigns and plans?

[24] A: Yes.

[25] Q: Okay. Now, are your – do you

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[1] consider yourself to be a challenging professor?

[2] A: Yes.

[3] Q: Okay. And you expect your students to [4] do the best job that they can; is that right?

[5] A: Yes.

[6] Q: I want to ask you some questions about [7] hypothetical ad campaigns. I want you to do your [8] best job in telling me how you would proceed down that. Okay? Now, I want you to assume that you [10] have been hired by RJR to market cigarettes to 14 [11] to 18-year olds. I understand it's illegal, but I want you to assume that. You're an employee so [13] you need to try to accomplish this goal. They've [14] asked you to adjust the Joe Camel marketing [15] campaign to make it target 14 to 18-year-olds, [16] specifically nonsmokers. However, because that [17] marketing is illegal, you need to make it appear that you were still targeting adults. What [19] changes to the campaign do you make to accomplish [20] these goals?

[21] A: I'm going to have to really think [22] about this one because I thought you were giving a [23] hypothetical that was okay to do and everything [24] else. That would be much easier. But if you're [25] saying how to be – I don't think you can.

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[1] really. You would have to – you would have to do [2] something very, very different. And to get [3] nonsmokers as

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compared to smokers, really [4] different techniques that you would use.

[5] Q: Such as?

[6] A: Well, you have to tell nonsmokers – [7] first of all, that group is so small, we're [8] talking about 18 and under in terms of the volume [9] is very small, like 1 percent of the volume. So [10] if I was telling this company something that was [11] economical, that would be a real challenge. What [12] you're going after is something that isn't [13] economically feasible. You know at the age of 18, [14] there's a tremendous amount of switching.

[15] So strategically I would think it [16] would be, for a number of reasons, not only [17] because it's illegal, but you're alleging we want [18] to be sneaky about it, that would be silly. [19] Because I think you will be ultimately caught in [20] that area. I think what you need to do is wait [21] until they're a legal age and that they're smoking [22] already. There's going to be plenty of time to [23] get those people. It's a natural occurrence.

[24] Q: Okay. Assuming they've decided it is [25] still economically feasible and they want to do

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[1] it, what do you do –

[2] A: And I want to be illegal and all [3] the –

[4] Q: That's right.

[5] A: – though that out the window.

[6] Q: And I'm not making any reputation that [7] you would do this.

[8] A: I know. I just want to make sure the [9] record –

[10] Q: Yes.

[11] A: You understand I don't believe you can [12] do it, okay, but hypothetically if somehow, you [13] know, the media and such – you would have to have [14] young people like themselves. You wouldn't have [15] Camels in here. You would have young [16] individuals. You would have people who are 14 [17] years old. You would have their parents giving [18] them cigarettes.

[19] Q: Remember you want to make it appear [20] that you're still targeting adults because it's –

[21] A: I just don't think you can do that. I [22] don't think you can – you can be effective – [23] first of all, the challenge is to get that small [24] volume, all right, so to get that small volume to [25] be effective at all, you're going to have to be

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[1] very, very clear. It's going to be very obvious [2] to people what you're doing. Indeed, if you're [3] successful, you're going to get all of the country [4] and social groups and everybody else in back of [5] you saying this is a great idea. At school [6] they're going to reinforce that.

[7] Q: So –

[8] A: So what you need to do, you need to [9] have the whole social environment change that [10] way. That would be a way of working it. But you [11] can't do it on the sly, do two things at once and [12] still make any sense if you're going after that [13] small volume.

[14] Q: So if I understand your testimony, is [15] that it can't be done right now without being [16] obvious that that's, in fact, what you're doing?

[17] A: Yes. And obvious would mean not only [18] obvious to you, but obvious to me, obvious to [19] everyone. It would be very clear that you would [20] be using such things as the use of parents and [21] very young people. In fact, I don't think the [22] cartoon characters would be effective at all. You [23] need to have perhaps a different kind of media and [24] you need product placement in the schools. You [25] need to get their parents and – their parents to

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[1] give the cigarettes to them, let them know that [2] it's okay, not that it's a furtive activity, that [3] it's honored. Maybe the churches, for example, [4] would back you up on that. Religious [5] organizations believing this is part of what's [6] important and Republicans and Democrats all behind [7] it.

[8] Q: All right. Fair enough. Doctor, have [9] you reviewed the tobacco industry's advertising [10] campaigns in Texas in preparation for your [11] deposition today?

[12] A: I've seen overall campaigns that would [13] reach Texas. I haven't looked at regional [14] campaigns if, in fact, there would be any regional [15] campaigns that haven't been done in other states.

[16] Q: Have you seen anything regarding the [17] tobacco industry's promotional campaigns in Texas?

[18] A: Well, as I said, I've seen promotional [19] campaigns that would include Texas.

[20] Q: Okay. Have you reviewed the tobacco [21] industry's advertising or promotional expenditures [22] in Texas?

[23] A: Parts of Texas.

[24] Q: What parts?

[25] A: The areas in which I did some data

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[1] collection.

[2] Q: For the Joe Camel study?

[3] A: Correct.

[4] Q: Do you remember what those parts were?

[5] A: I believe I did some in Dallas, [6] perhaps. I do them every day. I did some data [7] collection in Dallas.

[8] Q: Okay. Have you reviewed the tobacco [9] industry's use of billboards in Texas for your [10] deposition today?

[11] A: Again, that would be only in terms of [12] some of the study – developing some of the [13] sampling frames I did for my study.

[14] Q: Okay. Have you ever reviewed any RJR [15] document regarding the intent of the Joe Camel [16] campaign?

[17] A: Yes.

[18] Q: What was their intent?

[19] A: Their intent was to get people away [20] from the Marlboro brand and to get as many as they [21] would from other brands. But the primary target [22] would be Marlboro.

[23] Q: Have –

[24] A: Talking about users, adult users of [25] Marlboros.

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[1] Q: Have those documents been produced in [2] your disclosure?

[3] A: I guess since I'm not relying on them [4] it's not something that's produced.

[5] Q: And I guess that's something I do want [6] to clarify. This is a good opportunity to do [7] this. It's your testimony that regardless of the [8] intent of the tobacco industry, if they intended [9] to market to minors, it didn't work?

[10] A: Yes.

[11] Q: Okay. And is that why –

[12] A: Yes. It didn't get minors to start [13] smoking, to experiment, to continue.

[14] Q: Was it effective in getting them to [15] switch if they were already smoking?

[16] A: Well, if we're talking about regular [17] smokers, we're talking about 18-year-olds. But if [18] they're 17, it's conceivable they could switch. [19] They would have to be regular smokers.

[20] Q: Is it conceivable that a 15-year-old [21] can be a regular smoker?

[22] A: Awful few of those.

[23] Q: But you are talking –

[24] A: Conceivable.

[25] Q: You're talking about averages, right?

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[1] The average age –

[2] A: No. I'm talking about percent that [3] started at each age and we'd be talking about a [4] very small number. They're also self reports. I [5] think the self reports probably get less valid as [6] we get younger and under the legal age, for a [7] number of factors – a number of reasons for it.

[8] Q: Have you ever asked anyone at RJR

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if[9] the Joe Camel campaign was intended to target [10] smokers – underage smokers or nonsmokers?

[11] A: I don't remember.

[12] Q: Is that a question that you would [13] likely have asked somebody?

[14] A: I think that information comes out in [15] other ways. I don't think it required a, "By the [16] way, let me know whether you're doing this or [17] not." I've looked at documents when I was at the [18] Federal Trade Commission, looked at a lot of [19] material, I've discussed the issues. There have [20] been opportunities for people to mention things or [21] to say things that would provide me with that [22] information and I have never gotten a hint that [23] anyone intended that. If anything, people would [24] say we absolutely do not want to. They perceive [25] it as a serious problem that youth are smoking and

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[1] I never got any feeling at all that they intended [2] to go after those people.

[3] Q: Have you ever read a document entitled [4] Research Planning Document on Some Thoughts About [5] New Brands for the Youth Market, which is a 1973 [6] R.J. Reynolds document?

[7] A: It might have been something that was [8] shown to me in a deposition. If you read the [9] depositions, you can remember that a number of [10] documents were shown to me. It's conceivable that [11] would have been one of them.

[12] Q: What do you consider to be a learning [13] smoker?

[14] A: I don't know what a –

[15] Q: Is that a term you –

[16] A: No, it's not something that's used.

[17] Q: You may not remember this either, but [18] have you read a document entitled Youth Target [19] Study '87 which was done by R.J. Reynolds' [20] Canadian affiliate?

[21] A: I remember seeing that, yes. It was [22] also I think provided to me in that deposition.

[23] Q: Okay. You're aware in there that they [24] performed an extensive study on subjects as young [25] as 15 years old? Or do you remember? I don't

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[1] want you to guess.

[2] A: Yes, I do remember. I remember it was [3] part of sort of an omnibus research proposal in [4] which as I remember some of the correspondence, [5] they were specifically told not to provide data on [6] people who were under the legal age, nonetheless [7] it was. And I don't remember in reviewing it it [8] was specifically dealing with tobacco use or aimed [9] at their unique use. It was a use for a broad [10] range of clients, that's an omnibus sort of [11] survey.

[12] Q: Do you know how much has been spent, [13] both advertising and promotional – and I know [14] sometimes promotional is hard to quantify. Do you [15] know how much has been spent on the Joe Camel [16] campaign? Have you ever seen –

[17] A: Never totaled it up. No, I never saw [18] anything – I've seen notes of it in depositions, [19] but I've never –

[20] Q: What were those numbers?

[21] A: I don't remember. They were hundreds [22] of thousands – hundreds of millions, but I don't [23] remember over what time period or yearly or [24] whatever.

[25] Q: Now it does occur on occasion that a

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[1] company will spend a fair amount on advertising [2] that completely fails; is that correct?

[3] A: Yes. Depends what you mean by fail. [4] They didn't get their objective in some sense.

[5] Q: That's what I mean. And –

[6] A: But I want to know, their objective [7] may not be ultimate sales. In fact, that is – [8] ultimately somehow they would like to get a share [9] of the market if they're in the mature stage. It [10] doesn't mean they need to have sales tied in [11] directly with advertising.

[12] Q: Have you ever come across a company [13] that would spend hundreds of millions of dollars [14] on an advertising campaign if they did not think [15] or if they had not determined that it would [16] accomplish their goals, whatever those goals were?

[17] A: That's one of the reasons I work in [18] the commercial area. There are oftentimes in [19] which they are unable to make a determination, [20] even in a very broad sense, about the impact of [21] their promotion. That's very typical. It's very, [22] very difficult to find that out.

[23] Q: Kind of risky going in?

[24] A: Risky going in? Sure. Not only risky [25] but different to figure it out. You've heard of

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[1] the little Jay Wanamaker statement of half of my [2] advertisement is waste, you just don't know which [3] half. That's been around since chain stores [4] opened up in the teens and twenties.

[5] Q: Let's ask about – let me ask you [6] about after the ad campaign has been running. [7] Would a company continue to spend tens of millions [8] or hundreds of millions of dollars on a campaign [9] if, in their opinion, it had not accomplished or [10] was not accomplishing its goal?

[11] A: There's a phenomena – well, all I can [12] tell you, yes, if – a big brand or brand that's [13] make, you know, good share will continue to get [14] money. Those that lose share, quickly lose the [15] opportunity of spending money. That's just a [16] phenomenon, very, very difficult to deal – big [17] brands beget big budgets.

[18] Q: I want you to assume with me that [19] RJR's intended to target underage nonsmokers with [20] the Joe Camel campaign. Would you assume that [21] fact for me?

[22] A: Yes.

[23] Q: Do you believe that RJR would continue [24] with a campaign if it did not accomplish its goal, [25] if that was its goal?

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[1] A: First of all, as I said before, I [2] think it would be very, very difficult to make any [3] kind of tie between that. Second of all, I think [4] I talked about what an incredibly small volume as [5] compared to other groups they can more readily get [6] without running into any problems in terms of [7] perceptions. So I can't imagine why they would [8] spend money to reach that group anyway since [9] they're going to become smokers, and ultimately [10] Camel smokers, if their campaign is going to be [11] good in terms of brand share when they're legal.

[12] Q: Now, just coincidentally I'm getting [13] to the point where I want to talk to you about [14] brand switching and loyalty. And it's your [15] opinion, if I understand correctly, that all [16] cigarette advertising accomplishes no purpose [17] other than encouraging brand loyalty, brand [18] switching, or facilitating distribution; is that [19] correct?

[20] A: That does it. All I can remember at [21] this point.

[22] Q: Who has the biggest shares, market [23] shares in the cigarette market?

[24] A: Philip Morris and Marlboro, through [25] the Marlboro brand.

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[1] Q: Do you know the estimated percentage [2] of that?

[3] A: I think somewhere in about [4] 40 percent. Depends upon whether we're talking [5] about the full flavor or whatever, the different [6] segment is. But I will say 40 percent.

[7] Q: How about all Marlboro cigarettes?

[8] A: I'm going to say – in the United [9] States?

[10] Q: Yes.

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A: I would say probably 30 to 40 percent.

Q: Okay. And is Camel second?

A: I don't think so.

Q: Do you know where Camel falls in there?

A: Maybe about third or fourth, something like that.

Q: Okay. What's second and third?

A: Winston may be second.

Q: And third, if you know?

A: I don't remember right offhand.

Q: Okay. Now, if cigarette advertising were eliminated completely in its entirety and there was no influence on brand loyalty, brand switching, would you expect that Marlboro's and,

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say, Camel's market share would be frozen or fixed?

A: Well, okay. First of all, you're saying no advertising.

Q: No promotion, no advertising.

A: No promotion, no effects on brand switching.

Q: No sponsoring. No sponsorship.

A: Okay. All right. All right. Let's just say there is none of that. I guess you could just as easily say – I'm a little confused – what's going to happen with the share? Are they going to stay frozen or not? Over time, the big brand will get bigger, the most small brands will fall out.

Q: Why is that?

A: It's a phenomenon of the marketplace. That's where we get that distribution problem.

Q: Okay. So it would be advantageous, under that scenario, for the biggest brand to not have any advertising at all, to have it completely banned?

A: Could be argued, yes. Monopoly probably doesn't need to have that kind of stuff, particularly if it's in that stage of the product

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life cycle and you've got the behavior the way it is.

Q: Doctor –

A: Again, it kind of depends upon product life cycle, that kind of thing.

Q: I understand. Doctor, do you believe that advertising serves as a barrier to entry of new competitors? Let's take the tobacco industry.

A: No. I don't think so. In fact, I think it enables new ideas and new brands to come into the marketplace. I mean, there is an argument sometime that they say it does, but I think there's an equal justification that allowing advertising and making sure there's as much competition as possible is good.

Q: Wouldn't it be advantageous to have a barrier to entry if your interest is brand loyalty maintenance?

A: To have a ban?

Q: To have a barrier to entry if the purpose of your advertising is to have – maintain your brand loyalty?

A: You might be able to maintain brand loyalty with coming out with better product. Therefore, you would want to do advertising. Also

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you see it's not as if there aren't other forces at work. There could be a lot of things that would happen; maybe down the road some competitor to a tobacco product, maybe in some other form. It may be some calamity that befits something, that affects your raw resources.

A lot of things would affect why you would want to continue advertising. But if those things didn't happen, then a ban on advertising would keep out competitors and the large brand, for a various number of reasons, would stay large.

Q: Doctor, do you know who Nora Lenares is?

A: No. I've heard the name. I don't know who she is right offhand.

Q: Have you ever spoken with her?

A: No.

Q: Have you ever received any information from her?

A: No.

Q: Do you or will you rely in any way upon her opinions in this case?

A: I've heard the name. It might have been in a deposition.

Q: I will represent to you she is an

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expert that's been retained on the defense side of this case. You've had no contact –

A: I have no contact. I haven't seen anything that she produced.

Q: How about Robert Hoover?

A: I've heard the name, have not seen anything he's produced.

Q: Haven't received any documents?

A: Haven't received any documents, no.

Q: Okay. The last thing I really want to talk to you about is the – pretty much the events of last week, the pulling of the Joe Camel ad campaign. Were you in the States when you found out that that ad campaign had been pulled or were you in –

A: Yes.

Q: Okay. When did you first learn that the campaign was been pulled?

A: Last week sometime.

Q: Were you given advance notice of the decision?

A: You know, I think one of the attorneys heard about it.

Q: And told you?

A: Uh-huh.

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Q: But it was – I know the announcement was made late last week so you would have found out within a couple days of that if it was before?

A: Hours before, maybe the day before. It was probably hours before.

Q: You weren't consulted in any way –

A: No.

Q: – whether formally or informally on that decision?

A: No.

Q: What would you have told them if they would have consulted with you?

A: Well, I think that decision was made on a number of grounds, and I don't think I had enough information to give them a kind of input I feel I would be confident in doing. I don't know their situation in terms of settlements. I don't know their situation in terms of where the campaign was in terms of it basically no longer being useful for brand switching, so I really wouldn't have enough information on that.

Q: Do you think the criticism over – the stated criticism over Joe Camel's appeal to children was part of the reason for pulling the ad campaign?

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A: The negative publicity probably had some input, you know, yes. But I don't know. I've seen various reports from the press release and some newspapers alluded to that. Just as somebody who works in the area of marketing, one would think that that would be one of the issues you would have to deal with in some way.

MR. ANGELOVICH: Would you like one? I just happen to have an extra.

THE WITNESS: Good. This is going to be an exhibit.

MR. ANGELOVICH: Yes.

THE WITNESS: I was hoping to get a copy of this.

(Deposition Exhibit 7 was marked.)

Q: (By Mr. Angelovich) I'm going to hand you what has been marked as Exhibit 7. I will represent to you that it

http://legacy.library.ucsf.edu/tid/auq07a00/pdf
industrydocuments.ucsf.edu/docs/fhhl0001

is the front page of the [20] USA Today for Friday, July 11, 1997. Would you [21] read the name of that article, please.

[22] A: "Joe Camel dies; victim of his own [23] success."

[24] Q: Okay. In the second column, the third [25] paragraph in that column beginning with the

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[1] word "We're."

[2] A: Second column, third paragraph. Yes.

[3] Q: "'We're not denying the controversy [4] was not part of the reason for killing the [5] character off', R.J. Reynolds spokesman Richard [6] Williams said. 'It was time to move on'." That's [7] pretty much in line with your position that this [8] negative criticism probably did, in fact, have [9] some effect on RJR's decision to kill the [10] campaign?

[11] A: Well, I never talked to anybody about [12] whether it would or not. But I think that it's [13] been going for about nine years and it was time, [14] as we know in advertising, to freshen up a [15] campaign, to make it relevant once in a while. [16] Now I think that other people have positioned the [17] brand in a way that it might be wise to move on in [18] other ways.

[19] Q: How - is the pulling of the ad going [20] to have any effect on your future Joe Camel [21] research?

[22] A: Don't have any future Joe Camel [23] research unless it's the data set that I have.

[24] Q: You have the article coming out. Are [25] you -

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[1] A: Yes.

[2] Q: - considering -

[3] A: Yes.

[4] Q: - talking about this in the article [5] now that it's occurred?

[6] A: Well, I may re-analyze some data. I [7] might come up with some different things I'm [8] looking at. I don't think - it's not affecting [9] my research program. I think that's what you [10] would say. I don't have a research program right [11] now that is dealing in primary research on this [12] particular issue.

[13] MR. ANGELOVICH: I'm sorry. I [14] only have one copy of this. Can you mark that for [15] me, please.

[16] THE WITNESS: I see you use the [17] Net a lot. Good. Buy my book.

[18] MR. ANGELOVICH: When I can get [19] it away from my daughter.

[20] (Deposition Exhibit 8 was marked.)

[22] Q: (By Mr. Angelovich) Doctor, I'm going [23] to hand you what's been marked as Deposition [24] Exhibit Number 8. I will represent this is a [25] story from the Reuters news group that I obtained

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[1] off the Internet regarding the killing of the Joe [2] Camel ad campaign. If you look down at the [3] bottom, I'm just going to point there, if you [4] follow along, the quote in there is, "'We are [5] taking this new campaign nationally because of the [6] very positive response we have heard from adult [7] smokers who have seen some of the new ads that we [8] have run in selected magazines since March', Fran [9] Creighton RJR's vice president of marketing for [10] Camel said in the press release." Now the [11] question, based on that statement, do you [12] conclude - can you conclude that RJR believes the [13] new campaign is more appealing to their adult [14] customers?

[15] A: Based on the statement, no, I - hard [16] for me to determine much. It's a statement.

[17] Q: Okay. Fair enough. Now I want to ask [18] you about this new - just a few questions about [19] this new campaign. Other than that I've got maybe [20] one or two follow-ups then I'm going to set you [21] free. This is actually two pieces.

[22] (Deposition Exhibits 9-A, 9-B, 9-C, and 10 were [23] marked.)

[24] Q: (By Mr. Angelovich) Doctor, I'm going [25] to hand you Deposition Exhibit 10. I will

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[1] represent to you that this is the front page and [2] then following article on the pulling of the Joe [3] Camel ad in the San Antonio Express on Friday, [4] July 11. The only real question I have about this [5] is were you aware that Joe Camel ad campaign begin [6] in a French porn magazine?

[7] A: French porn magazine?

[8] Q: Porno magazine.

[9] A: No.

[10] Q: Okay. You hadn't heard that before?

[11] A: I heard it was a French ad or [12] something like that, but I didn't hear anything [13] else.

[14] Q: I'm not representing the accuracy of [15] what the writer says. That's just what the [16] article states.

[17] A: No.

[18] Q: I've handed you Exhibits 9-A, B, and [19] C. I will represent to you these are ads I pulled [20] out of the most resented issue of Rolling Stone [21] magazine and one came - actually the 9-A and 9-B [22] came from the most recent issue of Us magazine. I [23] may have that back - backwards. I may have [24] gotten two out of Rolling Stones. Were you [25] consulted in any way regarding the new campaign?

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[1] A: No.

[2] Q: Have you seen these pictures prior to [3] this date, these ads?

[4] A: No. I don't think I've seen these [5] pictures. I've seen press reports talking about [6] them. I've seen some other iterations.

[7] Q: Do these ads use imagery as that term [8] is defined in the industry?

[9] A: Well, image is a pretty broad [10] category.

[11] Q: Why don't you tell me what the broad [12] category of imagery is.

[13] A: Well, I think when you're talking [14] about illustrations, you are obviously talking [15] about imagery. Presumably one can - even without [16] showing illustrations can develop some imagery on [17] the part of the consumer or the individual or the [18] reader as they do with novels. It's a pretty [19] broad category. People are getting images some [20] way, either generated by themselves looking at [21] them and interpreting them.

[22] Q: Would you consider those ads to be [23] informational?

[24] A: Yeah. They're giving information.

[25] Q: Are you referring to the federally

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[1] mandated warning label?

[2] A: That's part of it.

[3] Q: Okay. And the federally mandated [4] listing of tar and nicotine levels?

[5] A: No. That would certainly be part of [6] it. The warning label would be important. And [7] the tar would be important to some people. I [8] think the package is very important.

[9] Q: Other than what the federal government [10] has required RJR to put in their ads, what [11] information do you garner from those?

[12] A: The package. We're talking about I [13] think two different types. Here is the menthol [14] and here is a regular.

[15] Q: Do you think a three- to six-year-old [16] would be more likely to recognize Joe Camel or [17] these women in these pictures?

[18] A: Well, it would depend what you match [19] the women with.

[20] Q: Well, matching with the cigarette just [21] like you matched Joe Camel.

[22] A: Maybe over time.

[23] Q: I guess you can't say at this point?

[24] A: No. Matching is generally something [25] that depends on the methodology, what you match it

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up with.

Q: Have you done any studies in which you were - I'm going to call two different categories of people who appear in ads. You have famous people or perhaps characters, and then you have just sort of regular people, okay?

A: Uh-huh.

Q: And the study that you did regarding Joe Camel, I would put in the category of famous people.

A: Right.

Q: Mickey Mouse, golden arches, what have you. Then have you done any studies regarding matching that don't involve famous people?

A: Well, matching, you know, that would be things on recognition issues I've done, which was a matching. But it didn't deal with matching up a trade character with a package, but it would be symptoms with a claim. I've done matching work on that. I've looked at the impact of testimonials, uh-huh. I've done a lot of memory work, yes.

Q: Do you have an opinion which of these ads is more appealing to young children, these ads or Joe Camel?

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A: I don't know what you mean by appealing.

Q: Catch their attention, hold their attention?

A: Probably none of them really hold their attention.

Q: You don't think the Joe Camel ads catch or hold a child's attention?

A: No. I don't think so.

Q: Do you think these ads or the Joe Camel ads would be more appealing to a teenage boy?

A: Is the teenage boy a smoker?

Q: Why don't you tell me for a smoker and nonsmokers.

A: Smokers would tend to have a higher probability of taking a look at ads that have smoking.

Q: Do you think these ads featuring these women, which is a smoking ad, or the Joe Camel ad, which is a smoking ad, which do you think would be more appealing to those teenage boys who are smokers?

A: Appealing, if you're just saying which one if we rated maybe how long they looked at it

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or something like that, which would just be some sort of a weak memory thing, or Joe Camel?

Q: Yes.

A: I don't know they're doing - they have different things in them. And if you were talking about when you first did Joe Camel versus now? There's all kind of whereof factors and everything else, in terms of if you've seen this before.

Q: Now regarding nonsmoking teenage boys, which do you think is going to catch and hold their attention longer? The Joe Camel ads or the ads with these women in them?

A: Well, if they're not smoking, they're probably not going to pay attention to it. One of the interesting things about consumers old and young is that - I'm sure it happens with you as well, if it's a product category that you don't like, that would probably be those individuals who don't smoke, then they probably wouldn't be looking at these ads. They would pass them right up. If anything, it might reinforce their negative view about these things. So it could be that, you know, it would get their attention and it actually turn them off more and that's - I

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think I talk about that in my article, that's that mere thought.

Q: Okay. Just a couple follow-ups. Do you in any way believe the craving for a cigarette is analogous to the craving for Gummy Bears or, say, a Twinkie?

A: Gummy Bears, infamous phrase by someone. It would depend on how often they did the behavior, how much they attached that behavior to a number of different stimuli. It's quite conceivable that somebody, for example, who has serious problems with overweight because of Twinkies, maybe they particularly like those Twinkies, that they now have associated the use of Twinkies with not only a lot of different situations, but maybe moods as well. We find that with bulimia, compulsive eating, and some other things. So any product could do it as much as a cigarette.

Q: Okay. I know that you talked somewhat about countries that have banned or several limited tobacco advertising.

A: Uh-huh.

Q: Prior to the ban in those countries, did the tobacco ad budget for any of the countries

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come close to the amount spent on tobacco advertising in the United States?

A: Not on a per capita basis, probably.

Q: What about on a total basis?

A: We're talking about very small countries. That would be - wouldn't be a fair comparison. If we're talking about Finland and Norway compared to the U. S., or Australia that's got 18 million people, about as many people as there are in Florida. So I don't think it's a fair comparison. But upon a per capita basis, you would find advertising expenditures not only are probably similar, but also similar to other products.

Q: Okay. Now regardless whether you feel it's a fair characterization or not, prior to the ban on tobacco advertising in some of these countries, or the limiting, did any of these countries - any of the ad budgets in those countries for the tobacco industry come close to what's spent in the United States on tobacco manufacturing, total budgets?

A: No. As I said, we're talking about a far larger number of people. So I wouldn't expect the - I don't know specifically. I've seen

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figures. I haven't compared for Finland, for example, in 1970 versus the U. S. in 1970. But again, Finland probably has fewer people than Florida does. So it would be a very, very small - but again, per capita is the way we look at advertising expenditures, costs per thousands and these kinds of criteria.

Q: Finally, Doctor, have you reviewed - I know that you've reviewed some RJR documents and you're going to either have produced or you're going to produce those to us, the ones that you've looked at. Have you reviewed any documents -

A: I don't have any RJR documents.

Q: Okay. Do you have any?

A: Do not have any.

Q: Okay. Have you reviewed at any time any American Tobacco Company documents?

A: Yes. I think I have. When I was at the FTC. Very few. Mainly Brown & Williamson.

Q: And let me - I'm going to ask you about each and every one of these companies. I don't want to ask you about when you were at the FTC. I just want to ask you about in your capacity as working or as being retained as an expert by these tobacco companies. Because I

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understand that - I read your deposition, I understand you looked at some stuff at the FTC. I'm not interested in that.

Regarding this litigation, not just

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Texas but all this litigation, and your involvement in it as an expert witness, have you reviewed documents from the American Tobacco Company?

A: I don't remember any.

Q: Brown & Williamson Tobacco Company?

A: I don't remember any.

Q: Philip Morris?

A: I don't remember any. Other than something that was provided to me at a deposition, which is – I may not know the source of, I have not independently looked at.

Q: Have you looked at any Philip Morris internal documents during your work for them in Australia?

A: No.

Q: How about the Liggett Group?

A: No.

Q: Have you looked at any documents of the Lorillard Tobacco Company?

A: Not that I can remember.

Q: Have you looked at documents of the United States Tobacco Company?

A: Not that I can remember.

Q: Have you looked for documents for Hill & Knowlton, Inc.?

A: No.

Q: How about documents from the Council for Tobacco Research?

A: No.

Q: Documents from The Tobacco Institute Research Committee?

A: No.

Q: How about The Tobacco Institute, documents from them?

A: No.

MR. ANGELOVICH: I'll pass the witness.

MR. McDERMOTT: No questions.

THE VIDEOGRAPHER: Off the video record.

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COUNTY OF DALLAS X

I, Ronald R. Cope, a Certified Shorthand Reporter duly commissioned and qualified in and for the State of Texas, Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that there came before me on the 14th day of July at Jones, Day, Reavis & Pogue located at Metropolitan Square, 1450 G Street N.W., in the city of Washington, D.C., the following named person, to-wit: RICHARD W. MIZERSKI, who was duly sworn to testify the truth, the whole truth, and nothing but the truth of knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon examined upon oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness, and signature of the witness is to be before any notary public and returned within 30 days from date of receipt of transcript.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or

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Ronald R. Cope

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

THE STATE OF TEXAS,	§	NO. 5:96CV91
	§	
Plaintiff,	§	
	§	JUDGE DAVID FOLSOM
v.	§	
	§	
THE AMERICAN TOBACCO COMPANY, et al.,	§	MAGISTRATE JUDGE WENDELL C. RADFORD
	§	
Defendants.	§	JURY

AMENDED NOTICE OF ORAL AND VIDEO DEPOSITION OF RICHARD MIZERSKI, PH.D. ON JULY 14, 1997

TO: Harold Waldrop, Administrative Liaison Counsel for Defendants
Atchley, Russell, Waldrop & Hlavinka, L.L.P.
1710 Moore's Lane
Texarkana, TX 77503

PLEASE TAKE NOTICE that, under Fed. R .Civ. P. 30, Plaintiff, State of Texas, will take the oral and video deposition of Richard Mizerski, Ph.D. on Wednesday, June 14, 1997, at 9:00 a.m. at Jones, Day, Reavis, and Pogue, 1450 G Street, N.W., Washington, D.C. The deposition will continue from day to day until completed.

1. The deposition will be taken before a court reporter appointed or designated under Fed. R. Civ. P. 28. All parties are invited to attend and cross-examine.

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Respectfully submitted,

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By: _____
GRANT KAISER, BY PERMISSION OF
Walter Umphrey, Attorney-in-Charge

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CERTIFICATE OF SERVICE

I hereby certify compliance with Fed. R. Civ. P. 5 and the Case Management Order of November 5, 1996, that a true and correct copy of the foregoing document has been sent by overnight delivery service (with diskette) and facsimile on July 10, 1997, to the following:

Howard Waldrop, Esquire
Atchley, Russell, Waldrop & Hlavinka, L.L.P.
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FROM

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U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAY 22 1997

DAVID J. MALAND, CLERK

BY: DEPUTY

EOD 5/22/97

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

THE STATE OF TEXAS, Plaintiff, VS. THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP MORRIS INC.; LIGGETT GROUP, INC.; LORILLARD TOBACCO COMPANY, INC.; UNITED STATES TOBACCO COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL FOR TOBACCO RESEARCH-USA, INC. (Successor to Tobacco Institute Research Committee); and THE TOBACCO INSTITUTE, INC., Defendants.	§	CIVIL ACTION NO. 5-96CV91 JUDGE: DAVID FOLSOM MAGISTRATE JUDGE: WENDELL C. RADFORD

[illegible] ORDER

This Court having considered the parties' Joint Motion to Amend the Case Management Order, and having reviewed the pleadings and other papers on file in this matter, it is

HEREBY ORDERED that Paragraph 7(b) of the Case Management Order shall be amended to read as follows:

1. No later than 120 days prior to the date set for trial, the parties shall file and serve expert disclosure statements similar to the disclosures made by the parties in State of Florida v. American Tobacco Company, et al. (an example is attached hereto).

2. With respect to retained experts, no fewer than seven days before an expert's deposition is noticed to begin in

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accordance with the CMO, the party on whose behalf the expert is testifying shall produce to liaison counsel for the opposing party(ies) the following material:

(i) a list of the opinions the expert intends to offer at trial;

(ii) copies of all documents the expert has relied on to form the opinions the expert intends to offer at trial or a list of those documents if the documents have been exchanged in discovery;

(iii) a copy of the expert's curriculum vitae;

(iv) a list of all books, articles, and papers authored, in whole or in part, by the expert; and

(v) a list of all cases since 1994 in which the expert has testified, either in deposition or at trial.

3. With respect to "nonretained expert witnesses," Joseph Baumgarner, Victor DeNoble, William Farone, James Mold, Ian Uydess, and Jefferey Wigand, the parties agree that the plaintiff will only produce a disclosure as described in paragraph 1 above. Pursuant to art. 2(2) of the Plan, no further disclosure will be required with the understanding that all nonretained experts may be deposed by defendants and, in these depositions, will disclose all the opinions they will express at trial.

4. Opinions not disclosed in accordance with paragraphs 2 or 3 above or in the expert's deposition shall not be admissible at trial.

5. No expert depositions will take place before June 16, 1997.

6. Expert depositions will be noticed at least 14 days in advance of the deposition. Parties shall continue to confer before noticing depositions as required by paragraph 3(c) of the CMO.

7. The foregoing shall apply to all experts *except* those experts covered by the Agreed Order entered by the Court on April 24, 1997. Experts covered by the April 24, 1997 Order shall include all experts whose testimony depends in whole or in part on plaintiff's damages models or calculations and all experts conducting original studies or damages surveys in this case. Disclosures for these experts shall be made in accordance with the Plan on the dates indicated in the April 24, 1997 Order.

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IT IS FURTHER ORDERED, that Paragraphs 4(a) and 5(a) of the Case Management Order shall be amended so that the parties may have up to and including July 15, 1997, to serve interrogatories and requests for admission on one another. The parties shall have 30 days to respond to any such discovery requests.

Judge David Folsom
United States District Court
Eastern District of Texas
May 22 1997

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FILE

JONES, DAY, REAVIS & POGUE

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9712:jrd
556655-018-351

July 7, 1997

VIA FACSIMILE

Grant Kaiser, Esq.
Kaiser & Morrison, P.C.
2901 Turtle Creek Drive
Suite 201
Bank One Building
Port Arthur, TX 77642

Re: State of Texas v. The American Tobacco Co. et al.

Dear Grant:

Pursuant to paragraph 7(b) of the Case Management Order (as amended by Order dated May 22, 1997), enclosed are:

(1) List of Opinions of Dr. Richard G. Mizerski pursuant to CMO Paragraph 7(b)(i);

(2) a copy of Dr. Mizerski's most recent curriculum vita and a list of books, articles, and papers authored, in whole or in part, by Dr. Mizerski; and

(3) the following documents on which Dr. Mizerski may or will rely to form the opinions he intends to offer at trial*:

(a) Product Disadoption: Quitting Smoking as a Diffusion Process;

(b) Point of View: Building Brand Popularity: The Myth of Segmenting To Brand Success;

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* These documents are in addition to those contained in the 10 boxes of documents Sureway Express delivered to your office this morning.

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(c) Examining "Conventional Wisdoms" About Advertising Effects With Evidence From Independent Sources;

(d) Advertising: Strongly Persuasive Or Nudging?;

(e) The Long-Term Impact of Promotion and Advertising on Consumer Brand Choice;

(f) Two Forms of Compulsive Consumption: Comorbidity of Compulsive Buying and Binge Eating;

(g) A Cognitive Model of Drug Urges and Drug-Use Behavior: Role of Automatic and Nonautomatic Processes.

Additionally, and in compliance with paragraph 7(b) of the Case Management Order, set forth below is a list of additional documents which Dr. Miserski may or will rely on in forming opinions he may offer at trial We believe these documents have previously been exchanged in discovery.

(1) 1993-1994 Texas Department of Health Annual Report;

(2) January 12, 1993 Texas Department of Health publication entitled Accent on Health;

(3) Texas Office of Smoking and Health publication entitled Vending Machines Can't Say No (1993);

(4) Texas Health and Human Services document entitled Minors' Access to Tobacco reporting Texas specific information in the Morbidity and Mortality Weekly Report dated February 26, 1993;

(5) Excerpts from Hearings on S.B. 115 and S. B. 120 Before the Senate Comm. on Health & Human Affairs, 71st Leg., R. S. (February 14, 1989);

(6) Special Legislative Report entitled Clearing the Air: Regulating Tobacco and Smoking (March 8, 1994);

(7) Improving Immunization Programs and Restricting Children's Access to Tobacco and Alcohol, Interim Report (September 1996);

(8) Texas Mental Health and Mental Retardation documents regarding the use by minors of tobacco products at MHMR facilities;

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(9) draft of document entitled Activity Report Minors and Tobacco;

(10) "Strategy to Limit Minors' Access to Tobacco"; and

(11) 1995 Health and Human Services publication entitled Disturbing the Peace.

Additionally, pursuant to paragraph 7(b)(v) of the May 22, 1997 Order, we wish to inform you that as of July 7, 1997, the date of this disclosure, the cases in which Dr. Mizerski has provided deposition or trial testimony since 1994 are Moore et al. v. The American Tobacco Co. et al., Case No. 94-1429 (Chancery Court of Jackson County, Mississippi) and State of Florida et al. v. The American Tobacco Co. et al., Case No. 95-1466 (Circuit Court of Palm Beach County, Florida).

Finally, Dr. Mizerski's deposition has been scheduled for July 14, 1997. It will begin at 9:00 a.m. in the Washington, D. C. office of Jones, Day, Reavis and Pogue, which is located at Metropolitan Square, 1450 G Street, N.W. We assume plaintiff will provide the court reporter.

Please call me if you have any questions.

Very truly yours,

Thomas E. Pennell

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List of Opinions of Dr. Richard G. Mizerski Pursuant to CMO Paragraph 7(b)(i)

Defendants submit a list of the opinions of Dr. Richard G. Mizerski, as required by Paragraph 7(b)(i) of the Case Management Order, as amended.

1. Consumer decision-making is influenced by a significant number of factors (e.g., education, experience, values, religious beliefs, social class) that have differential influence depending on the product, the stage of the product in the product lifecycle and the consumer's stage of adoption or disadoption. Consumer decision-making is thus highly individualistic. Among the numerous influences on consumer behavior are a limited number of marketer-controlled influences (e.g., price, distribution, marketing). The impact of these marketer controlled influences on consumer decision-making is limited (e.g., create brand awareness, communicate product attributes, etc.).

2. The stage of a consumer package good in its product life cycle affects the potential impact of marketing on demand for that product. The impact of marketing on product demand depends on whether the product category at issue is "new" or "mature." Marketing may facilitate demand for "new" products (e.g., the "Weed Eater") by creating awareness of the product and its use, availability, etc. Such marketing efforts, cannot, however, make consumers want, need, afford or purchase such products. On the other hand, marketing cannot stimulate aggregate demand (i.e., create "primary demand") for mature products. Attempts to stimulate demand for mature products through various marketing efforts have failed (e.g., product category advertising for wool, coffee, etc.). Similarly, research involving comparisons among countries that have banned or severely restricted marketing for tobacco products provides evidence that such restrictions do not significantly affect smoking incidence among minors or adults. In other words, marketing for products in the mature phase of the product life cycle cannot "expand the market." Instead, marketing for products in the mature or declining phase of the product life cycle affects brand choice by consumers (i.e., is designed to maintain customer loyalty or solicit competitive brand-switching) and aids maintaining distribution for the brand.

3. Cigarettes as a product category are in the late mature or declining stage of their product life cycle.

4. The impact of marketing on consumers is generally misunderstood and overestimated, e.g., "the third person effect." Marketing is not capable of turning consumers into pawns of marketers who are compelled to purchase products that they would not otherwise purchase simply because of particular marketing efforts by the manufacturer (e.g., numerous products marketed by sophisticated marketers fail in the marketplace). Consumers ultimately select and use those products that fit their needs as shaped by the numerous influences on the consumer decision-making process.

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5. The impact of marketer-controlled marketing on adolescents (i.e., persons aged 11-17) is not much different than its impact on adults. Marketing is not capable of turning adolescent consumers into pawns of marketers simply because of particular marketing efforts by the manufacturer (e.g., numerous products specifically marketed to adolescents by sophisticated marketers fail in the marketplace). By the time that children enter adolescence, they have developed the majority of cognitive defenses to marketing employed by adults. Adolescent consumers ultimately select and use those products that fit their needs, or their perceived needs, as shaped by the numerous influences on the consumer decision-making process.

6. Research involving the recognition of product logos or trade characters among young children demonstrates that, while young children may recognize brand logos or trade characters for numerous consumer brands, including those for cigarette brands, young children dislike cigarettes as a product category. There is no evidence that product logo or trade character recognition during pre-adolescence positively influences later smoking initiation or use.

7. The reasons why some persons (whether adults or adolescents) start or continue smoking are complex and have been extensively studied over the past forty years by the government, the public health community and academics from a variety of disciplines. Smoking is fundamentally a social behavior. The overwhelming weight of this research has consistently reported that smoking initiation is influenced by a significant variety of factors and has been most closely correlated with numerous specific influences (e.g., parental influence, peer influence, smoking by older siblings, access to the product). Research that attempted to correlate smoking initiation among adolescents to marketing by cigarette manufacturers has failed to demonstrate that such marketing efforts play a significant role in smoking initiation, experimentation, or smoking maintenence by this group. Similar research exists with respect to underage use of alcoholic beverages. The absence of such findings is not surprising given the numerous factors that influence consumer decision-making generally that are not controlled by marketers. For example, it is unlikely that cigarette marketing would materially contribute to continued smoking by an adolescent, following experimentation with the product. Whether such a person continues to smoke is instead significantly correlated to the person's initial experiences during experimentation, the person's attitudes about smoking, whether the person belongs to (or aspires to belong to) a peer group in which smoking is prevalent, the degree of automaticity of the behavior, and various personality and lifestyle factors.

8. Advertising expenditures by cigarette manufacturers are not extraordinary, but rather are fairly average, when compared to spending by other consumer product manufacturers. In addition, there has been a shift from traditional forms of advertising in favor promotional spending among most consumer product manufacturers (e.g., soft drink manufacturers, airlines, long-distance telecommunications providers). Meaningful comparisons of total promotional spending among various consumer product manufacturers are extremely difficult and cannot be made with arithemetic precision.

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9. Viewed from both a historical and contemporary standpoint, the content of cigarette advertising (i.e., themes and imagery) have not been unique as compared with advertising for other consumer products during comparable time periods.

10. The marketing of tobacco products have not negatively affected either the awareness of or belief in the health risks long associated with smoking among consumers. The lack of impact of marketing efforts may be understood in terms of the manner in which consumers process information from various sources.

11. Efforts to prevent underage smoking iniation should focus on the social causes of smoking behavior among adolescents, their coping mechanisms, and access to the product at the retail level. For example, it is widely recognized that the access laws to tobacco are not enforced. Yet, access to tobacco products is a significant correlate to underage tobacco use. The prevalence of underage smoking will decrease if access laws are enforced. In addition, if underage sales laws are enforced for the long term, underage experimentation with tobacco products will likely also decrease.

12. The criticisms of cigarette advertising are applicable to advertising for other consumer products,(e.g., alcoholic beverages, gambling). Efforts to restrict cigarette advertising as a means of reducing smoking prevalence among adolescents, while politically expedient, represent poor public policy. As described above, cigarette advertising is not a significant correlate with underage smoking. Such efforts by themselves will, therefore, be ineffective. More importantly, the elimination of cigarette advertising may reduce the belief in the need to address the root causes of smoking initiation among adolescents.

In addition to the opinions listed above, Dr. Mizerski is expected to comment upon and refer to various studies, polls and other research in support of these opinions. Dr. Mizerski is also expected to comment upon the opinions expressed by other experts in this case, and the evidence upon which they rely, to the extent that such evidence and opinions are within the scope of his expertise. Defendants specifically reserve the right to elicit from Dr. Mizerski opinions in addition to those set forth below that rebut opinions of plaintiff's expert witnesses or which are statements, beliefs, conclusions, or determinations supporting Dr. Mizerski's stated opinions.

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VITA

Richard W. Mizerski

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Griffith University
Nathan Campus Kessels Road
Brisbane Queensland 4111
Australia

7 Stanmore Road
Wolffdene
Queensland 4207
Australia

ACADEMIC BACKGROUND

Doctor of Philosophy in Economics and Business Administration. August 1974
University of Florida. Gainesville, Florida

Major Field - Marketing. Economic Theory
Minor Field - Advertising/Communications, Labor Economics

Bachelor of Science in Business Administration, June 1968
Northwestern University, Evanston, Illinois

Major Field - Marketing
Minor Field - Advertising

EMPLOYMENT

Professor of Marketing
Faculty of Commerce and Administration
Griffith University
Nathan, Brisbane
Queensland, Australia

Head, School of Marketing; responsible for all funding, staffing and curriculum decisions 1995 to present.

Deputy Dean, Faculty of Commerce and Administration.

Instruct undergraduate consumer behavior and promotion courses and a Ph.D./Honours Consumer Behavior/Promotion Management seminar.

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Professor of Marketing
Department of Marketing, September 1980 to August 1995
College of Business
Florida State University
Tallahassee, Florida

Chairman, Faculty of Marketing; responsible for all funding, staffing, and curriculum decisions. 1985-1986.

Instructed undergraduate, master's and doctoral courses on consumer behavior, marketing strategy, promotion, modeling and research.

Director of the Florida State University, College of Business Behavioral Laboratories. 1984 to 1990
Responsible for the design, outfitting, oversight of construction and management of a four room audio/visual complex designed for experimental psychological and physiological research on business issues.

Staff Consultant on Advertising and Marketing, October 1979 to December 1980
Project Consultant, January 1981 to Present
Federal Trade Commission
Washington, D.C.; Atlanta, GA.

Responsible for providing counsel to the Federal Trade Commission on policy matters concerning marketing and advertising strategies and techniques as they relate to commission rules, guides, cases, and other activities; on research techniques and methods; and the consumer decision-making process.

Assistant Professor of Advertising and Marketing,
Department of Marketing, September 1976 to August 1979
College of Business
University of Cincinnati
Cincinnati, Ohio

Instructed undergraduate, master's and doctoral courses in consumer behavior, marketing strategy, research and advertising/promotion.

Assistant Professor of Advertising and Marketing,
Department of Marketing, September 1974 to June 1976
Arizona State University
Tempe, Arizona

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MM = Mature Mkt.
RAM = Risk'd Action Mindd.

Instructed undergraduate, master's, doctoral and executive development courses in consumer behavior, marketing strategy, principles of advertising, advertising media, and advertising campaigns.

PUBLICATIONS

MM Forrest, Edward and Richard Mizerski, eds. (1996). Interactive Marketing: The Future Present, IL: NTC Publishing.

MM Mizerski, Richard, Katherine Straughn, Bill Jolley and Charles Hofacker (1996). "Evaluating the Performance of Competing Scanner Data Baseline Algorithms," Marketing Science Institute: Gainesville, Fl.

Mizerski, Richard, Katherine Straughn and Jackie Williams (1996), "Investigating the Effect of Promotion on the Disproportionate Lottery Game Sales to Ethnic Minorities," American Academy of Advertising: Vancouver, Can.

MM Sonner, Brenda, Gail Ayala and Richard Mizerski (1995), "A Comparison of the Responsiveness of Mall Shoppers Versus Female Shoppers to Sales Promotion." Proceedings of the Southern Marketing Association, Orlando, FL: Southern Marketing Association, November.

RAM MM Mizerski, Richard (1995), "The Relationship Between Cartoon Trade Character Recognition and Attitude Toward Product Category in Young Children," Journal of Marketing, Vol. 59 (October).

MM Williams, Jackie, Richard Mizerski and Katherine Straughn (1994), "Ethnic Differences in State Lottery Play," Advances in Consumer Research, Boston, MA, Association for Consumer Research.

RAM MM Mizerski, Richard, Katherine Straughn and Jack Feldman (1994), "The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children," Marketing and Public Policy Conference Proceedings, Vol. 4, Arlington, VA.

MM Ayala, Gail, Richard Mizerski, and Brenda Sonner (1994), "An Investigation Into Income Effects on Coupon Redemption." Atlantic Marketing Association 1994 Annual Conference, Atlantic City.

RAM Vollmers, Stacy and Richard Mizerski (1994), "A Review and Investigation into the Effectiveness of Product Placements in Films," Proceedings of The 1994 Conference of the American Academy of Advertising, Tucson, Arizona.

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MM Straughn, Katherine and Richard Mizerski (1993), "An Analysis of the Impact of Stock-outs on Short and Long-Term Brand Share Using Scanner data." 20th International Research Seminar in Marketing, La Londe Les Maures, France.

RAM MM Mizerski, Richard, Brenda Sonner-Fox and Katherine Straughn (1993), "A Re-evaluation of the Reported Influence of the Joe Camel Trade Character on Cigarette Trial and Use by minors," Marketing and Public Policy Conference, East Lansing, Michigan.

RAM MM Mizerski, Richard (1993), "Trade Character Recognition and Attitude Toward the Product by 3 to 6 Year-Old Children," Marketing and Public Policy Conference, East Lansing, Michigan.

RAM MM Mizerski, Richard, Brenda Sonner-Fox and Katherine Straughn (1993), "A Re-Evaluation of the Reported Influence of the Joe Camel Trade Character on Cigarette Trial and Use by Minors," Proceedings of the American Academy of Advertising, Montreal, Canada.

RAM Heiens, Richard and Richard Mizerski (1991), "Modifying the Behavioral Intentions Paradigm for the Prediction of Gift Giving Behavior," in Retailing: Reflections, Insights, and Forecasts, Robert L. King (ed.), Richmond, VA: Academy of Marketing Science.

MM Mizerski, Richard, Katherine Straughn, and Charles Hofacker (1991), "The Comparative Effects of Food Retailer Newspaper Advertising and Merchandising on the Sales of an Impulse Food Product," Proceedings of the 1991 American Academy of Advertising.

MM Mizerski, Richard, Charles Hofacker, and Katherine Straughn (1991), "Missing and Partially Missing Brand Sales: Modeling Stockouts," New Frontiers in Scanner Research, ORSA/TIMS, January 1991.

RAM MM Mizerski, Richard, Katherine Straughn, Orin Sadler, and Donnie Tredwick (1990), "Cause-Related Marketing: Inducing Socially Responsible Alcohol Use," Proceedings of the 1990 American Academy of Advertising.

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RAM Mizerski, Richard, Marya Pucely, Pamela Perrewe and Lori Baldwin (1988). "An Experimental Evaluation of Music Involvement Measures and Their Relationship with Consumer Purchasing Behavior," Popular Music and Society.

Perrewe, Pamela and Richard Mizerski (1987), "Effect of Music on Perceptions of Task Characteristics", Perceptual and Motor Skills, Fall.

Perrewe, Pamela and Richard Mizerski (1987), "Locus of Control and Task Complexity in Perceptions of Job Dimensions," Psychological Reports, Fall.

MM RAM Mizerski, Richard, Charles Hofacker and William Jolley (1987), "Assessing Brand Equity for Resource Allocation and Strategy Development", Proceedings of the 14th International Research Seminar in Marketing, Aix-en-Provence, France, June.

Pucely, Marya, Richard Mizerski and Pamela Perrewe (1987), "A Comparison of Involvement Measures for the Purchase and Consumption of Pre-recorded Music. Advances in Consumer Research, Vol. 12, Proceedings of the 1986 Conference of the Association for Consumer Research, Boston, MA.

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Mizerski, Richard (1978), "Causal Complexity: A Measure of Causal Attribution," Journal of Marketing Research, 15, May.

Mizerski, Richard and William Swinyard (1979), "Using Multi-Attribute Attitude Models for Diagnostic Purposes," Proceedings of the 1978 Western AIDS Conference, San Diego, California.

Mizerski, Richard and Charles H. Patti (1979), "Personality and the Use of Advertising," in Steven E. Permut (ed.), Advances in Advertising Research and Management, Proceedings of the 1979 American Academy of Advertising National Conference.

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Florida State
UNIVERSITY

Faculty Handbook

Chapter 1: Constitution and Bylaws

Chapter 2: History and Government

Chapter 3: Values and Moral Standards

Chapter 4: Organization and Administration

Chapter 5: University-Wide Committees

Chapter 6: Academic Units and Policies

Chapter 7: Personnel Policies

Chapter 8: Faculty-Student Relations

Chapter 9: Annual Evaluation of Faculty

Chapter 10: Promotion and tenure

Chapter 11: Business Procedures

Chapter 12: General Information

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Faculty Handbook

Chapter 2: History and Government

2.1 History of Florida State University
2.2 Mission Statement
2.3 State Board of Education
2.4 Board of Regents
2.5 Buildings and Grounds

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2.2 Mission Statement

(Approved by BOR, July 28, 1988)

Mission. The Florida State University is a comprehensive, graduate-research university offering undergraduate, graduate, advanced graduate, and professional programs of study, conducting extensive research, and providing service to the public. Its primary role is to serve as a center for advanced graduate and professional studies while emphasizing research and providing excellence in undergraduate programs.

In accordance with the University's mission, faculty members have been selected for their commitment to excellence in teaching, their ability in research and creative activity, and their interest in public service. Among the faculty are recipients of many national and international honors, who have included two Nobel Laureates;Nobel laureates and seven members of the National Academy of Sciences, Members of;.

Given its history, location, and accomplishments, the University does not expect major changes in its mission during the next decade. Rather, it sees further refinement of that mission with concentration on its strong liberal arts base and on quality in its teaching, research, and public service. Areas of strength upon which the University has established its reputation, building excellence upon excellence, have been identified for continued special emphasis and quality improvement. Included are: the four components of the Science Development Grant--physics, chemistry, psychobiology, and statistics--together with the physical, biological, earth, and mathematical sciences closely related to them. Enhancement of the fine and performing arts began with the establishment of the Center for Music Research in the already prestigious School of Music and includes prominent programs in Theatre, Dance, and the Visual Arts. Within the areas of humanities, the Departments of English, Philosophy, Religion, and Humanities are particularly distinguished. Special emphasis in the policy sciences has been directed to the College of Social Sciences' Departments of Economics, Geography, Political Science, Public Administration, Sociology, Urban and Regional Planning, and to its Policy Sciences Center and the public policy components of the School of Criminology, the School of Social Work, and the College of Education.

The University's location in the State's capital provides great opportunity for service and interaction between governmental agencies and the social science and professional schools, especially the Colleges of Business and Law and the Institute on Aging. Special resources, such as the Supercomputer Computations Research Institute and the Florida State Conference Center, enhance its ability to deliver such service. Strongly committed to its mission in international education, the University provides study-abroad opportunities for its students through the Florence and London Study Centers, which it operates for the State University System, and through programs which it maintains in Barbados, Costa Rica, the Republic of Panama, Switzerland, Yugoslavia, Taishan in China, the Chianti region of Italy, and Oxford, England.

As a major comprehensive residential state university, Florida State attracts students from every county in Florida, every state in the nation, and more than 100 foreign countries. The University is committed to high admission standards that ensure quality in its student body, which currently includes some 150 National Merit Scholars; and National Achievement scholars;, as well as students with superior creative talents. It also provides alternative admission and highly successful retention programs for special student populations. Most students pursue a full- time course of study in normal progression from high school or undergraduate institutions. Graduate students, who comprise nearly 20 percent of the student body, are enrolled in 203 graduate degree programs of which 68 covering 123 fields are doctoral. The median age of all students is 21 and about 23 percent, mostly graduate students, are over 25 years old.

Mission Statement
Panama City Campus

Mission. The Panama City campus of the Florida State University, established as a center in 1971, was transferred by the legislature to the University in 1982. Since then FSU has established ten baccalaureate and ten master's degree programs earned entirely through work in Panama City. Full- time faculty, both resident

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and commuting from Tallahassee, teach eighty-three percent (83%) of courses for degree programs and elective options from other departments. All faculty meet the same high standards for teaching, research, and service as those on the main campus.

The University replicates in Panama City the quality though not the quantity of upper division and graduate programs available on the main campus. Based on identified student needs, the University offers in Panama City as many of the high quality programs given in Tallahassee as resources will permit. An effective and mutually beneficial partnership exists with Gulf Coast Community College, which provides lower division work leading to the Associate of Arts degree for many students who enroll in the campus degree programs.

This branch campus emphasizes excellence in instruction and close ties with the local community, identifying and-- insofar as resources permit--meeting the needs of the area. The Colleges of Business and Education list extensive undergraduate and graduate programs; degree programs are offered in several liberal arts areas. Nursing offers a master's degree. To meet the demonstrated needs of the community, the University plans to provide undergraduate, graduate and continuing education work in engineering. These programs will be offered with the cooperation of the Engineering Services Center at Tyndall Air Force Base, the Naval Coastal Systems Center, and the National Marine Fisheries.

Since the Panama City campus operates as a non-residential commuter campus with no University housing available or contemplated, present facilities can support a considerable increase in the current enrollment of nearly 900. The 1987- 88 student population, more than half of whom are employed full-time and enroll for half-time study or less, is served by a night-school program. More than half are over thirty years old; about the same number are married with children. For all these reasons most consider themselves placebound. Plans are to increase the number of daytime classes; as this happens the student population is expected to shift gradually toward a more traditional mix.

Panama City is rapidly growing and developing. As campus population grows and more day classes are offered, the range of student activities and services will increase. The University also plans to become a cultural center both for its own students and the Panama City community, with contributions from the performing arts, the Center for Professional Development, and other University programs. The summer musical is the most obvious example.

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6.11 Faculty Research

The research and creative activity of members of the faculty of The Florida State University is considered inseparable from their teaching. Each complements the other. Members of the faculty are expected to participate in research programs and other projects of a creative nature.

University funds for research are available through regular departmental operating budgets and through the Council on Research and Creativity under the Vice President for Research, using the Sponsored Research and Development Fund. These funds are available to cover the use of research assistants, technical assistants, clerical help, travel, equipment and supplies for projects carried out on or off campus.

The University urges individual investigators, departments, and other units to seek financial support for research from sources outside the University. Numerous private businesses, governmental units, and private foundations support university research programs. Demonstrated research ability and recognized professional standing constitute the most important factor in procuring financial assistance for research.

Questions about University research policies should be addressed to the Vice President for Research.

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6.13 Professional Development Leaves

6.13.1 BOR-UFF Agreement, 1991-1994, see Article 22.1.

6.13.2 University Policy

All employees covered by the Agreement between the Board of Regents and the UFF who have three or more years of service, except those who are tenured or who are serving in tenure-earning positions, are eligible to apply for professional development leave at full pay for up to one semester or its equivalent, i.e., leave at half pay for two semesters. Such leaves are granted to increase an employee's value to the university through enhanced opportunities for professional renewal, educational travel, study, formal education, research, writing, or other experience of professional value, not as a reward for service. Leave may be requested for up to one semester but may be taken for a shorter length of time or may be taken for intermittent periods or for leave at one-half pay for two semesters. The University shall offer at least one professional development leave each year for each 20 such eligible employees provided that no more than one employee in each department or other professional unit need be granted leave at the same time.

A Committee on the Professional Development Program, composed of one research associate, one faculty member, and one librarian appointed by the President, and the Director of Libraries, the Dean, Graduate Studies and Research, and the Dean of the Faculties (who serves as chairman), shall annually invite applications from those eligible for Professional Development Grants for the following academic year. Applications are to be submitted through the department chairman, program leader or project leader or project director and dean of the school or college in which the applicant has an appointment. Requests for leave shall be limited to two or three pages with an appropriate outline of the project or work to be accomplished during the leave; the request shall be accompanied by a standard vita. The Committee shall make recommendations to the President for the awarding of Professional Development Grants.

The request for leave should be limited to two or three pages describing the purposes of the leave and the potential benefits to the recipient and the University. Requests should include a standard vita with an appropriate outline of the project or work to be accomplished during the leave. Applications to the Committee on the Professional Development Program should be submitted through the department chairman, program leader, or project director, and the dean of the school or college in which the applicant has an appointment, or through the director of an equivalent unit (e.g., the Director of Libraries) for ranking the applications. The dean or director will transmit the applications to the Dean of the Faculties for the Committee no later than the last Friday in October. In evaluating applications for leaves, the Committee will use the following criteria for selection:

a. The merit of the project proposed

Statement of need/problem; clarity of proposal operation; realistic time frame; and qualifications of individual to accomplish project.

b. Benefits of the completion of the proposed project or work on the productivity of the department or function of which the employee is a part.

c. Benefits to the University; to the department; to the individual.

Policies Governing the Professional Development Leave Program:

1. Full-time members of the staff covered by the BOR-UFF Agreement with three or more years of service except those who are tenured or who are serving in tenure-earning positions shall be eligible for professional development leaves. Since the salary of an employee while on leave must still be paid from its regular source, employees supported on contracts and grants and Auxiliary funds are eligible only if the terms of the contract or grant or Auxiliary budget permit salary to be paid to an employee on

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leave.

2. A committee, to be known as the Committee on the Professional Development Program, shall be appointed by the President to establish guidelines for professional development leaves as provided for in the BOR-UFF Agreement, inform appropriate persons, and screen applications. The Committee shall be composed of one Research Associate, one Administrative and Professional employee, one faculty member, the Vice President for Research and Graduate Studies, the Director of Libraries, and the Dean of the Faculties, who serves as chairman.

3. The Committee on the Professional Development Program shall give primary consideration in the ranking process to: a. Merit of proposal; b. Benefits of the project; c. Length of service of applicant; d. Need for equitable distribution of awards among the various units of the University; and e. Length of time since applicant has been relieved of duties for purposes of professional development.

4. No more than one employee in each department or other professional unit need be granted leave at the same time. The professional development leave shall be granted at full pay for up to one semester or the equivalent, i.e., half pay for two semesters.

5. In accepting a professional development leave, the employee also accepts the obligation to return to the University's employment for at least one academic year following the conclusion of the leave. Agreements to the contrary must be reduced in writing prior to participation. Return to the University of salary received during the program may be required in those instances where neither of the items indicated above is satisfied.

   The employee failing to spend the time as stated in the application for the professional development leave shall reimburse the University for the salary received during such leave.

6. Employees on professional development leave shall be eligible for promotion and salary increases.

7. Employees shall not normally be eligible for a second professional development leave until three years of continuous service are completed following the previous leave.

8. The employee must provide a brief written report of the employee's accomplishments during the professional development leave to the President or representative upon return to the university.

9. Contributions normally made by the Board of Regents to retirement and social security programs shall be continued on a basis proportional to the salary received. Board contributions normally made to employee insurance programs and any other employee benefit programs shall be continued during the professional development leave.

10. Eligible employees shall continue to accrue annual and sick leave on a full-time basis during the professional development leave.

11. While on leave, an employee shall be permitted to receive travel and living expenses, fellowships, grants-in- aid, contract or grant, or other financial assistance from sources other than the university to assist in accomplishing the purposes of the professional development leave. If such financial assistance is received, the university salary shall normally be reduced by the amount necessary to bring the total income of the professional development leave period to a level comparable to the employee's normal salary. Employment unrelated to the purpose of the professional development leave is governed by the provisions of Article 19, Conflict of Interest/Outside Activity.

    Questions to the Committee may be addressed to the Office of the Dean of the Faculties.

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6.20 Policies and Procedures for Dealing with Misconduct in Research and Creative Activity

6.20.1 Policy Statement

In fostering academic freedom, it is the policy of The Florida State University to uphold the highest standards of integrity in research and creative activity, and to protect the right of its employees to engage in research and creative activity. Researchers are expected to adhere to the standards of research in their area of endeavor, and to encourage adherence to those standards by their colleagues and by those under their supervision. Particularly unacceptable are fabrication or falsification of data in scientific research, and plagiarism in any research or creative endeavor. Deviations which are believed to constitute misconduct are to be reported to an appropriate University official. Misconduct does not include honest error or honest difference in interpretations or judgment of data.

Florida State University is committed to adhering to and enforcing applicable federal, state and local laws and to following procedures required by granting agencies from which grant funds are secured. Researchers are to be aware of any special provisions regarding standards of research and of procedures required by funding agencies for resolving allegations of misconduct in research. Application for funding from an agency shall indicate that the researcher agrees to the procedures required by that agency should it be necessary to investigate an allegation of misconduct in research.

Each department or unit in which research or creative activity is conducted will have a statement of procedures for fostering integrity in research and creative activity. Each department or unit will keep a current copy of its statement on file in the Office of the Vice President for Research.

6.20.2 Procedures for .Reporting; Allegations of Misconduct in Research and Creative Activity

A suspected instance of misconduct in research and creative activity is to be reported to an appropriate University official. Normally this report will be to the departmental chair or the dean of the college (or comparable administrator if the person involved is not under a dean; henceforth this will be understood when the term "dean" is used). Any University official, including departmental chairs, who receives such a report shall communicate the report to the dean of the college in which the alleged misconduct occurred. The dean of the college is responsible for informing the departmental chair (if the report is from another source), the Dean of the Faculties and the Vice President for Research. The dean is also responsible for promptly initiating an inquiry into any suspected or alleged instance of misconduct to determine whether an investigation is warranted.

6.20.3 Inquiry and Investigation

The inquiry will be conducted by a three person committee appointed by the dean. The inquiry will determine whether there is reasonable cause to conduct a full investigation. Upon initiating an inquiry the dean will notify the affected faculty or staff member in writing that an allegation has been made against him or her and that the dean's office is conducting an inquiry to determine whether there is reasonable cause to initiate an investigation.

It will be the task of the committee of inquiry to separate allegations deserving further investigation from frivolous, unjustified, or clearly mistaken allegations.

If the committee of inquiry recommends that no further action should be taken, no record of the allegation or inquiry is to remain in the accused faculty member's evaluation file.

If a full investigation is recommended by the committee of inquiry, the dean will appoint a three person faculty

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committee to conduct the investigation. The dean may appoint a larger committee or may appoint members from outside the University if that is deemed warranted by the circumstances of the case. The affected faculty or staff member will be given written notification of the charges and will be accorded due process in the investigation. Both the University and the affected faculty or staff member will have an opportunity to present evidence, call witnesses and have questions put to witnesses. A record of the proceeding will be available to the affected faculty or staff member at cost. The affected faculty or staff member may have counsel or a representative present during the proceedings. At the conclusion of the investigation, the committee shall provide documented recommendations to the dean regarding whether they think misconduct has occurred. The affected faculty or staff member will have an opportunity to provide the dean with a written statement regarding the recommendations.

The dean, in consultation with the Dean of the Faculties and the Vice President for Academic Affairs, will decide either to take action appropriate to his authority or to recommend a course of action to the Vice President for Academic Affairs. The dean can render a judgment that misconduct has not occurred; that misconduct has occurred and the appropriate penalty is within his or her authority; or that misconduct has occurred but an appropriate penalty is not within the dean's authority. The dean may act upon the first two judgments, the third would have to be a recommendation to the Vice President for Academic Affairs. If the affected faculty or staff member is judged not to have engaged in misconduct, this will be communicated to all appropriate, to restore the reputation of anyone alleged to have engaged in misconduct when allegations are not confirmed. If the affected faculty or staff member is judged to have engaged in misconduct this fact should be communicated to the faculty member along with the proposed penalty.

A faculty or staff member, at this point, depending on his or her standing and the severity of the proposed penalty will have available one or more avenues of appeal from which to choose as delineated in the BOR-UFF Agreement, the FSU Constitution, the Florida Administrative Code, and any other applicable authority.

Those appointed to inquiry or investigatory committees should be free of any conflict of interest and committees should have sufficient expertise to be able to assess the charges before them.

University procedures of inquiry and investigation are not to breach pledges of confidentiality or anonymity provided to human subjects of research.

Those accused of misconduct shall be afforded confidential treatment to the maximum extent possible.

6.20.4 Protection of those Reporting Misconduct

The University will protect employees who make good faith reports of misconduct in research or creative activity from job-related disciplinary reprisals and will make diligent efforts to protect their reputation. Confidentiality will be maintained to the extent compatible with law and due process. Once an allegation is made it shall be the responsibility of the University to pursue the matter. Those accused of misconduct in research or creative activity will be informed regarding the person or persons who made the allegation about their work, unless such knowledge is irrelevant to the evaluation of the allegation. This information will be provided with the notification that an inquiry is to take place.

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6.20.5 Promptness of Procedure

Each stage should be completed as quickly as is compatible with a fair and effective process for assessing the allegations. If the allegation involves research funded by certain agencies, a specific timetable will need to be followed.

6.20.6 Requirement of Notification and Interim Actions

Should it be necessary to provide information to external agencies or organizations, the Vice President for Research will be the University official responsible for those notifications. In some instances regulations will require interim actions. The Vice President for Research in consultation with the dean conducting the procedure

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of inquiry and investigation will initiate those interim actions. Those conducting an inquiry or investigation will provide necessary information to the Vice President for Research to allow him to comply with externally mandated actions or reports.

It is the policy of FSU to take legally allowed measures to set the record straight if misconduct is established.

6.20.7 Dissemination of Information Regarding Integrity; in Research and Creative Activity

The Vice President for Research shall publish a document containing all relevant University policy statements, generally applicable federal, state and local requirements, and specific requirements of particular funding agencies regarding integrity in research and creative activity. Each faculty member engaged in research or creative activity shall be given a copy. Staff or graduate students employed in research shall also be provided copies of this document. Those holding relevant administrative positions will likewise be provided copies. This document will be revised periodically so as to remain current.

Subsection A: Standards and Procedures for Addressing Allegations of Misconduct in Research funded by the National Science Foundation;.

These standards and procedures are meant to supplement the University's general procedures for handling allegations of misconduct in research and creative activity in order for the University to meet requirements promulgated by the National Science Foundation. If there are inconsistencies between these processes and the general University processes, provisions of this process supplant the incompatible general University provisions, when the research in question is funded by the National Science Foundation.

1. National Science Foundation has specific requirements for conducting investigations of allegation of misconduct involving work which it has funded. It is University policy that an applicant for funding from NSF or anyone working on a project funded by NSF agrees to be bound by the University's process of inquiry and investigation which implements NSF's requirements.

2. NSF "Misconduct" means (1) fabrication, falsification, plagiarism, or other serious deviation form accepted practices in proposing, carrying out, or reporting results from research; (2) material failure to comply with Federal requirements for protection of researchers, human subjects, or the public or for ensuring the welfare of laboratory animals; or (3) failure to meet other material legal requirements governing research.

3. NSF provides specific definitions of "inquiry" and "investigation": An "inquiry" consists of information gathering and preliminary fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation. An "investigation" is a formal examination and evaluation of relevant facts to determine whether misconduct has taken place or if misconduct has already been confirmed, to assess its extent and consequences or determine appropriate NSF action

4. The University will take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements and responsibilities.

5. The University will inform NSF immediately if an initial inquiry supports a formal investigation, and will keep NSF informed during such an investigation.

6. The University will notify NSF before deciding to initiate an investigation or as required during an investigation (i) if the seriousness of the apparent misconduct warrants; (ii) if immediate health hazards are involved; (iii) of NSF's resources, reputation, or other interests need protecting; (iv) if Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or (v) if the scientific community or the public should be informed.

7. In order to defer independent inquiry or investigation by NSF, the University will decide whether an

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investigation is warranted within 90 days, and will complete an investigation and reach a disposition within 180 days after initiating an investigation. Should additional time be needed, the University will seek a continuing deferral from NSF, however NSF may require submission of periodic status reports.

8. The University will provide NSF with a final report from any investigation.

9. The investigatory phase shall be deemed completed for the purpose of reporting the results of the investigation to NSF when the dean or the Vice President for Academic Affairs either finds the faculty or staff member innocent of the charges or finds misconduct to have occurred and proposes an appropriate penalty. Any such report to NSF must contain an account of any additional processes the affected person may invoke and the bearing those processes may have on the issue of misconduct.

   Florida State University may ask for an extension for reporting the results of an investigation in certain specified instances. If any of the following penalties are contemplated, a faculty member has a right to a peer hearing as specified in Rule 6C2-4.0335, Florida Administrative Code: to suspend with or without pay, reduce the compensation or rank of, terminate the annual appointment of a tenured faculty member; to immediately suspend or to terminate the appointment of a non-tenured faculty member prior to the expiration of the non-tenured faculty member's current employment contract. If an accused faculty member exercises this right, the University will request an extension, if needed, and provide an accounting of the current status of the case, and an estimation of the time needed to complete the peer hearing required by 6C2-4.0335.

10. Based on required reports to NSF, NSF may order that interim actions be taken to protect Federal resources or to guard against continuation of any suspected or alleged misconduct. Any interim action by NSF will be reviewed periodically during an investigation and modified as warranted. An interested party may request a review and modification of any interim action.

Subsection B: .Standards and Procedures for Addressing Allegations of Misconduct in Research funded by the Public Health Service of the Department of Health and Human Services.

These standards and procedures are meant to supplement the University's general procedures for handling allegations of misconduct in research and creative activity in order for the university to meet requirements promulgated by the Public Health Service of the Department of Health and Human Services. If there are inconsistencies between these processes and the general University processes, provisions of this process supplant the incompatible general University provisions when the research in question is funded by the Department of Health and Human Services or its institutes or agencies. These standards and procedures are necessary to meet the assurance conditions promulgated by the Public Health Service of HHS.

1. The Public Health Service of HHS has specific requirements for conducting investigations of allegations of misconduct involving research, research training or related activities which they have funded or for which funds have been requested. It is University policy that an applicant for funding from HHS or anyone working on a project funded by HHS agrees to be bound by the University's process of inquiry and investigation which implements the Public Health Service's requirements.

2. For PHS of HHS "misconduct" or "misconduct in science" means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting or reporting research. It does not include honest error or honest difference in interpretations or judgments of data.

3. PHS provides specific definitions of "inquiry" and ".investigation": "Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation; "Investigation" means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred.

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4. The University will inquire immediately into an allegation or other evidence of possible misconduct. An inquiry is to be completed within 60 calendar days of its initiation. A written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the inquiry. The individual(s) against whom the allegation was made shall be given a copy of the report, and if they choose to comment their comments will be part of the record. If circumstances clearly warrant, a longer period may be involved, but in that case the record of inquiry should include documentation of the reasons for exceeding the 60-day period.

5. Sufficiently detailed documentation of inquiries will be maintained for at least three years so as to permit a later assessment of the reasons for determining that an investigation was not warranted.

6. An investigation must be undertaken within 30 days if the findings from the inquiry provide sufficient basis for doing so.

7. The decision to initiate an investigation must be reported in writing to the Director, Office of Scientific Integrity on or before the date the investigation begins.

8. The investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as individuals who might have information regarding key aspects of the allegations; complete summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and include as part of the investigatory file.

9. An investigation should ordinarily be complete within 120 days of its initiation. Included in this time frame are the conducting of the investigation, preparing the report of findings, obtaining comments from subject(s) and submitting the report to the Office of Scientific Integrity. If the investigation cannot be completed in 120 days, the University will submit a request for an extension to the funding agency. This request will include an interim report on the progress to that point and an estimate of the date for completion of the report and other necessary steps. The University will file periodic reports as requested by the agency.

10. The University will notify the funding agency of the final outcome of the investigation. The final report will describe the policies and procedures under which the investigation was conducted, how and from whom information was obtained relevant to the investigation, and include the findings, documentation to substantiate the investigation's finding, and the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct. This report will be made available to the Director, Office of Scientific Integrity who will decide whether the Office will either proceed with its own investigation or will act on the institution's findings. If they can be identified, the person(s) who raised the allegations will be provided those portions of the report which address their role and opinions in the investigation.

11. If the decision is made to terminate an inquiry or investigation for any reason without completing all relevant requirements, a report of such planned termination, including a description of the reasons for such termination, shall be made to the Office of Scientific Integrity.

12. The University will notify the Office of Scientific Integrity if it ascertains from the inquiry or investigation that any of the following conditions exist:

    (1) There is an immediate health hazard involved;

    (2) There is an immediate need to protect Federal funds or equipment;

    (3) There is an immediate need to protect the interest of the person(s) making the allegations or the individual(s) who is the subject of the allegations as well as his/her co- investigators and associates, if

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any;

(4) It is probable that the alleged incident is going to be reported publicly.

(5) There is a reasonable indication of possible criminal violation. In that instance, the institution will inform the Office of Scientific Integrity within 24 hours of obtaining that information.

13. The investigatory phrase shall be deemed completed for the purpose of reporting the results of the investigation to HHS when the dean or the Vice President for Academic Affairs either finds the faculty or staff member innocent of the charges or finds misconduct to have occurred and proposes an appropriate penalty. Any such report to HHS must contain an account of any additional processes the affected person may invoke and the bearing those processes may have on the issue of misconduct.

    Florida State University may ask for an extension for reporting the results of an investigation in certain specified instances. If any of the following penalties are contemplated, a faculty member has a right to a peer hearing as specified in Rule 6C2-4.0335, Florida Administrative Code: to suspend with or without pay, reduce the compensation or rank of, terminate the annual appointment of a tenured faculty member; to immediately suspend or to terminate the appointment of a non-tenured faculty member's current employment contract. If an accused faculty member exercises this right, the University will request an extension, if needed, and will provide an accounting of the current status of the case, and an estimation of the time needed to complete the peer hearing required by 6C2-4.0335.

14. The University will take interim administrative actions, as appropriate, to protect Federal funds and insure that the purposes of the Federal financial assistance are carried out.

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7.45 Conflict of Interest; (See also Sections 7.46 and 7.47)

7.45.1 Board of Regents Policy--FAC 6C-5.245

(1) No employee of the State University System shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the full and competent performance of his duties in the public interest.

(2) All employees of the State University System are governed by the provisions of Section 112.313, Florida Statutes, setting standards of conduct for public officers and employees of agencies, and Section 112.3145, Florida Statutes, mandating the disclosure of certain financial interests.

(3) Outside activity and conflict of interest of bargaining unit employees shall also be governed by university rules and policies not in conflict with the BOR/UFF Agreement governing the same subject.

7.45.2 University Policy

a. The involvement of University employees in the regular activities of formal organizations shall meet statutory requirements dealing with conflict of interest and unfair competition and all University and Board of Regents' regulations.

b. It shall be contrary to University policy for a University employee to allow his association with The Florida State University to be used in advertising by a private firm or upon letterhead stationery or the masterhead of a firm (exception--advertising of textbooks written by University employees).

c. Faculty and academic staff members have the responsibility to check the possibility of conflict of interest between their outside employment activities and work at the University. The University subscribes in principle to the statement on this subject by the American Council on Education and the American Association of University Professors.

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7.47 Outside Employment and Activities

7.47.1 BOR/UFF Agreement, 1991-1994, see Article 19

7.47.2 University Policy and procedures on outside activities of faculty and academic staff

I. Outside Activities and Conflict of Interest

Outside activities, including employment, encompass external activities above and beyond the assigned duties and responsibilities of the faculty or professional staff member. No faculty member should engage in any regular or intermittent activity which interferes with the full discharge of the academic responsibilities of teaching, research, and service.

The Florida State University encourages University faculty and academic staff to undertake outside activities, including compensated outside employment, which will be of public service or will increase their effectiveness through enhanced professional reputations and broadened experience relevant to their University function. "Outside activity" is defined to mean any private practice, private consulting, additional teaching or research, or other activity, compensated or uncompensated, which is above and beyond a faculty or staff member's assigned duties and for which the University has provided no compensation (see Articles 18 and 19 of the BOR/UFF Collective Bargaining Agreement). These activities may include teaching in other institutions, business activities, and serving as members of advisory boards of governmental agencies and accrediting bodies. When outside activity is compensated by a State Agency, such activity is governed by the .i.Dual Employment Policy; of the University administered through the Office of the Dean of the Faculties and the Center for Professional Development and Public Service as described in Sections 7.48 and 7.49 of this Handbook.

Public service is one of the principal missions of the University. Public service may be part of one's academic assignment or may occur in conjunction with outside activity. It is through the outside activities of faculty and academic staff that much of the public service component of the University mission is accomplished. Furthermore the current economic development strategy of the State of Florida utilizes the public service function of the State University System by providing for the growth of high-technology industry based upon the intellectual contributions of university faculty and academic staff. It is not inappropriate for faculty and staff members and the University to profit from such creative technical development, and it behooves the University to encourage such activity within the limitations provided by Florida law.

Florida Statutes, Part III, Chapter 112, provide that no faculty or staff member shall engage in any outside activity which interferes with the full performance of his or her assigned duties. They further provide that such activities shall not create a conflict of interest, which is defined in Chapter 112.312 to mean a situation in which regard for a private interest tends to lead to disregard of a public duty or interest. The responsibility for complying with these provisions of Florida law is placed upon the faculty or staff member.

Before engaging in any compensated professional activity or any outside activity which a faculty or academic staff member should reasonably conclude may create a conflict of interest, the faculty or staff member shall submit to the department chairman or appropriate supervisor (dean in colleges or schools without departments) a written statement on the Florida State University Faculty Outside Employment Statement Form (FSU Form FOA 802) in compliance with University instructions (See Section 7.47.3 of this Handbook). It is the responsibility of the department chairman or supervisor to determine whether or not the proposed activity constitutes a conflict of interest or otherwise interferes with assigned duties and to process the request. This determination is made under the guidelines set out below.

II. Prohibitions under Chapter 112, Florida Statutes

Unless the conditions cited in the Chapter 112.313(12) exemptions listed below apply, the following activities

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of faculty and academic staff are prohibited:

1. No employee may rent, lease, or sell realty, goods or services to any institution of the State University System, including the Office of the Board of Regents, at which that individual is employed, unless the contract was entered into before October 1, 1975, or before beginning public employment. (Chapter 112.313(3), F.S.)

2. No employee may have an employment or contractual relationship with a business entity which is doing business with the State University System or any of its institutions. (Chapter 112.313(7), F.S.)

3. No employee may corruptly use or attempt to use that employment or any property or resource within that employment to secure a privilege, benefit, or exemption for such employee or anyone else. (Chapter 112.313(6), F.S.)

4. No employee may disclose or use information not available to the general public which was gained because of that employee's position for personal benefit or for the personal benefit of another person or business entity. (Chapter 112.313(8), F.S.)

5. No faculty member shall require the use of a textbook written by the faculty member without complying with University policy concerning the use of such textbooks as described in Section 7.46 of this Handbook.

III. Exemptions under Chapter 112.313(12), Florida Statutes

No employee shall be held in violation of Items 1. and 2. of Section II in doing business with the State University System or any of its institutions if any of the following conditions apply:

1. The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and: (a) the employee or the employee's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder; (b) the employee or spouse or child has in no way used or attempted to use their influence to persuade the institution or any personnel thereof to enter such a contract other than by the mere submission of the bid; and (c) the employee prior to or at the time of the submission of the bid has filed a statement with the Department of State disclosing the interest of the employee, spouse, or child in and the nature of the intended business.

2. The purchase or sale is for legal advertising in a newspaper for any utilities service or for passage on a common carrier.

3. An emergency purchase or contract must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.

4. The business entity involved is the only source of supply within the political subdivision of the employee (generally interpreted to be the State University System) and there is full disclosure by the employee of the employee's interest in the business entity to the Board of Regents and the institution prior to the purchase, rental, sale, leasing, or other business being transacted.

5. The total amount of the subject transaction does not exceed $500.

6. The business transaction is specifically approved by the President of the University and the Chancellor of the State University System and is made pursuant to Chapter 240.229 or 240.241, F.S. These sections authorize the University to establish and operate a division of sponsored research and obtain and manage patents and copyrights on products resulting from research programs.

IV. Interference with .i.Performance of Assigned Duties, Interference with

The determination of whether or not and to what allowable extent a given outside activity of a faculty or academic staff member interferes with the performance of assigned duties is the responsibility of the person's department chairman or appropriate supervisor, who is expected to apply sound professional judgment based

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upon standard practice in the particular field or discipline. This determination is made pursuant to the following general provisions of Florida law and University Policy:

1. No employee shall solicit or accept anything of value that would be influential to the performance of assigned duties or that is based upon an understanding that the official action or judgment of the employee would thereby be influenced. (Chapter 112.313(2), F.S.)

2. No employee shall have an employment or contractual relationship that will create a continuing or frequently recurring conflict between that employee's private interests and the performance of assigned duties. However this shall not prohibit an employee from having an occupation when that occupation by a person holding such public employment is required by law. (Chapter 112.313(7), F.S.)

3. In determining the allowable extent to which a teaching faculty member's classroom teaching assignment may be modified by rearranging schedules or providing substitute instructors to accommodate approved outside activities, the approving authority shall take into account not only the standard practice in the field or discipline but also the extent to which the outside activity benefits the program, the institution, and the faculty member as discussed in Section I above.

4. Any outside activity that involves both an employee and the employee's supervisor in a relationship, such as business relationships, which affects the ability of the supervisor to perform normal supervisory duties relative to that employee is prohibited.

V. Use of University Facilities in Outside Activities

Approval of any proposed outside activity which includes an intended use of University facilities, equipment, or personnel may be conditioned upon reimbursement to the University for any additional costs resulting from such use. Outside employment may be approved but use of University facilities, equipment, or personnel denied. If the intended use of University personnel is approved, such personnel may not be compensated by the University for work performed in connection with the outside employment and must obtain approval for such work as outside employment pursuant to University policy (See Sections 7.47.3 and 7.54 of this Handbook and Article 19.6 of the BOR/UFF Collective Bargaining Agreement).

VI. Development of Commercially Valuable Products

Normal activities of faculty and academic staff of graduate research universities often lead to discoveries which have the potential of being developed into commercially valuable products. Such development is encouraged under University Copyright and Patent policy (see Section 6.21 of this Handbook) administered by the Vice President for Research. Faculty and staff members making such discoveries should consult with the Vice President for Research as soon as it becomes apparent that such development is possible. University policy (Articles 18.3 and 18.4 of the BOR/UFF Collective Bargaining Agreement) includes the following provisions:

1. All patentable inventions and technological developments discovered or developed by a faculty or academic staff member while employed by the University shall be disclosed to the Vice President for Research. Disclosure of discoveries or inventions made during the course of approved outside employment may be delayed when necessary to protect the outside employer's interests until the decision has been made whether to seek a patent.

2. Except for discoveries or inventions made during the course of approved outside employment, a discovery or invention which is made in the field in which the investigator is employed by the University or by using University funds, facilities, materials, equipment, personnel, or proprietary technological information is the property of the University and the inventor shall share in the proceeds therefrom as shall be negotiated with the Vice President for Research and reflected in a written contract between the University and the faculty or staff member.

3. All discoveries or inventions made outside the field in which the discoverer or inventor is employed by the University and for which the University has provided no support are the private property of the inventor.

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However, the Vice President for Research, acting for the President, and the inventor may agree that the patent for such discovery and invention be pursued by the University and the proceeds shared.

4. While a faculty or academic staff member may engage in approved outside employment pursuant to a consulting agreement, requirements that the inventor's or University's rights to any patentable inventions or discoveries which arise during the course of such outside employment be waived must be approved by the Vice President of Research, acting for the President. The faculty or academic staff member who proposes to engage in such outside employment shall furnish a copy of this provision, and a copy of Article 18 of the BOR/UFF Collective Bargaining Agreement if in-unit, to the outside employer prior to or at the time the consulting agreement is executed.

VII. Financial Disclosure Policy

Faculty and academic staff members are reminded that they must comply with the financial disclosure provisions of Florida law. The Florida Commission on Ethics publishes a Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees annually. A copy of this document and any information related to financial disclosure may be obtained from the Commission on Ethics, P.O. Box, 6, Tallahassee, Fl 32302-0006 or by calling 904-488-7864. The "Code of Ethics for Public Officers and Employees" adopted by the Legislature is found in Chapter 112 (Part III) of the Florida Statutes.

VIII. University Review Committee on Outside Activities

If questions arise concerning the application of any of these standards and guidelines, any employee of the University may seek an advisory opinion from the University Review Committee on Outside Activities. This Committee shall consist of five tenured faculty members appointed by the President of the University after consultation with the Faculty Senate Steering Committee and the Vice President for Research. The terms of Committee members shall be determined by the President, who shall designate one member to chair the Committee.

Provision for administrative and staff support for the University Review Committee on Outside Activities shall be made by the Vice President for Research. The following are included in the charge to the Committee:

1. The Committee shall provide advice and interpretation when requested by a department chairman, dean, or other appropriate supervisor who has received a request to approve an outside activity of a faculty or academic staff member.

2. The Committee shall provide advice and interpretation when requested by a faculty or academic staff member who is considering requesting approval for an outside activity.

3. The Committee may consider both hypothetical and real situations.

4. When a department chairman, dean, or other appropriate supervisor has denied approval for an outside activity on which the Committee has not been consulted previously, the affected faculty or academic staff member may request that the Committee review the action taken. If the Committee concludes that the outside activity could have been approved under these guidelines, it shall consult with the approving authority to seek resolution of the matter. Should satisfactory resolution not be attained, the Committee may recommend to the President that the activity be approved.

5. When necessary the Committee may seek advisory opinions concerning matters before it from the State of Florida Commission on Ethics.

6. The Committee shall exercise a continuing overview of the functioning of these standards and guidelines and related University policy. From time to time, when appropriate, it shall report to the President and recommend any modifications to policy that it deems desirable for the best interests of the University. Such recommendations also might include suggestions that the University seek modifications to State Law in this area.

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7.47.3 Florida State University Outside Activity Statement Form

Before assuming any outside activity, the Florida State University Faculty Outside Activity Statement form (FSU Form FOA 802) shall be completed and sent through the supervisor/ chairman/ dean/ director. The original (ONLY) of this form when all signatures have been affixed is to be sent by the dean/director to the Office of the Dean of the Faculties. IF THE OUTSIDE ACTIVITY EXTENDS FROM ONE ACADEMIC YEAR INTO THE NEXT, A NEW OUTSIDE ACTIVITY STATEMENT MUST BE SUBMITTED IN SEPTEMBER OF EACH NEW ACADEMIC YEAR INVOLVED.

Special note on intermittent, recurring activities: It is not necessary for employees whose activities are in the nature of offering services, such as private consulting or expert witness appearances, on an intermittent or recurring basis to a variety of individual clients throughout the year to submit a separate form for each occurrence. Instead, a single form giving general information about the nature of the activity may be submitted at the beginning of the year. For example, NAME OF PROPOSED EMPLOYER might be listed as "Florida Legal Firms," LOCATION listed as "Appropriate to Activity," FUNDING SOURCE listed as "Client Fees," and EMPLOYMENT DATES indicated to encompass the entire year.

If there is to be any use of University equipment, supplies, personnel, or space in any outside employment or activity, a specific written agreement covering the conditions under which such use is permitted, including an agreement for reimbursement to the University of any additional costs resulting from such use or an agreement that reimbursement is not required, shall be attached to the Faculty Outside Activity Statement form (FSU Form FOA 802) reporting the activity. This agreement shall be drawn between the employee and the dean or director responsible for the management of the resources in question. Questions concerning such written agreements and whether or not reimbursement should be required are to be referred to the Vice President for Research.

University policy requires that each chairman/ dean/ director certify to the Office of the Dean of the Faculties each October that to the best of their knowledge all employees within their unit have complied with University outside activity/employment policy for the current year. Deans of departmentalized colleges and schools will collect certifications from departments and attach them to the dean's certification submitted for the college or school. Statements of compliance are to be submitted to the Office of the Dean of the Faculties no later than October 31 each year.

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7.54 Use of University Facilities

7.54.1 Board of Regents Policy--FAC 6C-5.251

(1) This rule is supplemented by the BOR/UFF Agreement.

(2) University related persons, organizations, and groups whose activities are related to and further the mission of the university may sponsor meetings in university space in accordance with university policies and procedures. All other groups and persons may use university facilities upon the payment of fees in accordance with university policies and procedures, when and if such facilities are available. Priority shall be given to those groups and persons whose activities are related to and further the mission of the university. A university may assess charges to recover direct costs for any use. Service, depending upon availability, may be furnished, upon payment of charges which reimburse the university for direct costs, to university related persons, organizations, and groups whose activities are related to and further the mission of the university. No person, group, or organization shall be excluded from this policy because they have collective bargaining as one of their objectives.

(3) No group desiring to use university facilities and services shall be denied such opportunity on the basis of the membership or non-membership of members of the group in any class which is protected under State or federal law.

7.54.2 BOR-UFF Agreement, 1991-1994, see Article 3.1

7.54.3 University Policy

The reservation and use of Florida State University space and facilities is a privilege and not a right. University space and facilities, university; shall be used first for the official and regular purposes and functions of the University. The University may extend the use of specified space and facilities to members of the University community subject to procedures and fees outlined in the University Business manual. Requests for space reservations by University units such as faculty, staff, administration, or any other unit within the University structure including the University Foundation, the Southern Scholarship and Research Foundation, and the Board of Regents, may reserve space with the University through the Space Reservations Coordinator in the University Union.

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Faculty Handbook

Chapter 12: General Information

12.1 Committee on Memorials and Courtesies

The Committee on Memorials and Courtesies acts for the Faculty Senate and the general faculty on the occasion of the death of members of the University faculty and staff, members of their immediate families, students, alumni, state officials, and other friends of the University. The Steering Committee of the Faculty Senate, with the advice and consent of the Senate, appoints the three members of the Committee. In order to function properly, the Committee needs the cooperation of all members of the faculty through annual contributions of one dollar each sent directly to the Committee.

12.2 Blood Bank

The FSU blood bank, administered by the Leon County Blood Bank, is available to all employees, students and their immediate family (immediate family is defined as "parents, spouse, children"). Requests to access the FSU Blood Bank must be made through the Student Health Service and approved by one of the coordinators. Eligibility status of faculty, staff and USPS will be determined through the University Personnel Relations Department. Recipients of units from the blood bank are encouraged to secure replacement of these units within a reasonable time.

12.3 University Club

Revision of the University Women's Club by-laws in April, 1984, changed the organization's name to University Club. Membership is open to the following: current and retired faculty, administrative and professional staff, religious directors, visiting professors, Board of Regents members and professional staff, and spouses, widow(ers), and parents of members. The dual purpose of the club is to create a social environment within the University community for exchange of ideas and friendship, and to support campus functions which enhance the University.

12.4 Recreational Facilities

The recreational facilities at Florida State University are open to faculty and their families. A heated outdoor pool is available for year-around instructional and recreational use. An eighteen-hole championship golf course is located two miles southwest of the main campus. A seventy-four acre outdoor facility, the Seminole Reservation, offers camping, canoeing, day-use and overnight cabins, meeting rooms, picnicking, playground equipment, family recreation, back- packing, sailing, and swimming. The intramural program offers faculty and students opportunities to participate in competitive sports, and the extramural program provides other leisure activities such as sailing, water skiing, and rugby.

12.5 Lost and Found

A lost and found service is maintained in the University Union. Lost articles will be returned upon proper identification by the owner.

12.6 Postal Service

Since the University operates its own postal services without federal aid, it can provide extra services such as the processing of campus mail without charge to offices on the campus--a service comprising half of the entire postal operations. The University Postal Services Department makes two daily pickups and deliveries of official mail from and to campus offices. The operation of the University Postal Services is for departmental

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business only. All mail dispatched to the U.S. Postal Service must have a Florida State University return address. Campus mail must bear a clear address of department and building.

12.7 Faculty Housing

The University has no housing available to faculty members. Student Government maintains an Off-Campus Housing Office in the University Union.

12.8 Florida State University Credit Union

University employees, members of their families, University graduates, or Seminole Boosters are eligible to join The Florida State University Credit Union. Relatives by blood, marriage, or adoption are also eligible and need not be living in the same household. According to its bylaws "the object of this Credit Union is wholly cooperative, being solely for the purpose of promoting thrift among its members, and creating a source of credit for them at legitimate rates of interest for provident purposes".

A deposit of ten dollars entitles the depositor to a full membership in the Credit Union. The Florida State University Credit Union is located at 431 South Woodward.

12.9 Department of Environmental Health and Safety

The Department of Environmental Health and Safety is responsible for developing and maintaining a comprehensive health and safety program at FSU. It is comprised of safety professionals in the areas of Radiation Safety, Fire Safety, Industrial Hygiene, Laboratory/Chemical Safety, Risk Management and OSHA Compliance. Important services provided include: approving and monitoring the use of radioisotopes, ensuring compliance with fire codes, managing asbestos abatement activities, disposing of hazardous wastes, controlling biological hazards, controlling hazards in laboratories, investigating injuries to persons and damage to property and coordinating University insurance matters dealing with property damage, general liability, and workers' compensation claims.

12.10 Policy On Smoking In University Facilities

The 1977 Legislature enacted a law which says in part, "The supervisor of each unit of government located in a governmental building shall establish rules governing smoking in that portion of the building for which he is responsible." This policy applies to conference rooms and auditoria, medical care facilities, corridors, lobbies, restrooms and other areas. The following policies have been established for Florida State University facilities. They should be considered as minimum guidelines which may be exceeded by individual departments.

Rules regarding smoking in the various facilities are as follows:

1. Auditoria--Smoking is prohibited in the seating areas of all University auditoria.

2. Classrooms, Seminar Rooms, Laboratories, Lecture Halls-- Smoking is prohibited in all classrooms, seminar rooms, laboratories, and lecture halls. Enforcement of this policy is the responsibility of the professor in charge of each class.

3. Conference Rooms

   a. General Conference Rooms--Smoking policies in general University Conference rooms will be determined by each group using the facility. If smoking is to be allowed, a specific smoking area within the room will be set aside by the chairman of each group using the facility.

   b. Departmental Conference or Meeting Rooms--Smoking policies in Department conference or meeting rooms will be determined by the department chairman or director of the department in charge of these rooms. If smoking is to be allowed, specific areas will be set aside by the chairman or

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director.

4. Corridors Lobbies, and Restrooms--Smoking is permitted in corridors, lobbies, and restrooms unless specifically prohibited.

5. Dining Areas--Smoking is permitted in all general dining areas located in University facilities as long as the size, ventilation and other criteria relating to public health, safety and comfort can be adequately met. Where feasible, specially designated smoking areas should be made available.

6. Elevators--Smoking is prohibited in all elevators.

7. Gymnasia--Smoking is prohibited in the seating and/or exercise areas of all University gymnasia.

8. Libraries--Smoking is prohibited in all University libraries, except for specific areas as designated by the appropriate Librarian.

9. Lounges--Smoking will be permitted in all general University lounges as long as the size, ventilation and other criteria relating to public health, safety and comfort can be adequately met. Where feasible, specially designated smoking areas should be made available.

10. Medical Care Facilities--Smoking in the University Health Center and Regional Rehabilitation Center shall be restricted to specially designated areas.

11. Developmental Research School--Smoking is prohibited on school grounds, in buildings, and vehicles utilized by the Developmental Research School. The Developmental Research School administration may designate an area to which smoking must be confined.

12. Offices--Smoking is permitted in private offices. Smoking during the conduct of business with others shall be upon mutual consent. Supervisor should establish "no smoking" areas in large open offices if it is the desire of one or more of the employees in the area. Such accommodation must not impair efficiency of work units or require additional work space, costly alterations or additional office equipment. When such accommodation cannot be made, smoking is to be prohibited.

12.11 .Naming of Campus Buildings, Facilities, Rooms, and Spaces

12.11.1 Board of Regents Policy, FAC 6C-9.005

1. A president may recommend for the consideration of the Board a name for any building or other facility on the campus.

2. The naming of a building or other facility shall be in accordance with the provisions of Section 267.062, Florida Statutes.

12.11.2 Florida Statutes Section 267.062, Naming of State Buildings and Other Facilities

1. Except as specifically provided by law, no state building, road, bridge, park, recreational complex, or other similar facility shall be named for any living person.

2. The division [of Historical Resources of the Florida Department of State] shall, after consulting with appropriate citizens' committees, recommend several persons whose contributions to the state have been of such significance that the division may recommend that state buildings and facilities be named for them.

12.11.3 University Policy and Procedures

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1. Naming Buildings and Facilities for Deceased Persons. A campus building or an identifiable exterior facility, such as a sports complex, may be named for a deceased person when recommended by the President and approved by the Board of Regents with the concurrence of the the Division of Historical Resources of the Florida Department of State. Naming proposals originating with campus units are submitted with detailed supporting documentation through the unit's division Vice President to the Chairman of the University Building and Campus Development Committee (Vice President for Finance and Administration). Academic Departments submit proposals through their Dean and Vice President.

2. Naming Buildings and Facilities for Living Persons. A campus building or an identifiable exterior facility, such as a sports complex, may be named for a living person only by special act of the Florida Legislature. After approving a recommendation that a building or facility be named for a living person, the President arranges for the introduction of appropriate legislation in the Florida Legislature. Naming proposals originating with campus units are submitted with detailed supporting documentation through the unit's division Vice President to the Chairman of the University Building and Campus Development Committee (Vice President for Finance and Administration). Academic Departments submit proposals through their Dean and Vice President.

3. Naming Rooms and Campus Spaces. Rooms in campus buildings and exterior spaces on the campus not identified as facilities may be named for deceased or living persons upon approval by the President. Naming proposals originating with campus units are submitted with detailed supporting documentation through the unit's division Vice President to the Chairman of the University Space Committee for rooms or the University Building and Campus Development Committee for campus spaces (Vice President for Finance and Administration chairs both committees). Academic Departments submit proposals through their Dean and Vice President.

4. Procedures. Naming proposals received by the Chairman of the University Building and Campus Development Committee and the University Space Committee originating with campus units or other interested parties are referred to the Subcommittee on Naming Campus Buildings, which is composed of the Dean of the Faculties (Chair), the Director of the Physical Plant, and the President of the Student Body. The Subcommittee determines the appropriateness of proposals and prepares recommendations to be considered by either parent committee for submission to the President. Implementation of recommendations approved by the President is the responsibility of the Vice President for Finance and Administration. After final approval, the name is conferred by the President at a naming ceremony arranged by the Office of Special Events. Questions about naming procedures may be referred to the Dean of the Faculties or the Vice President for Finance and Administration.

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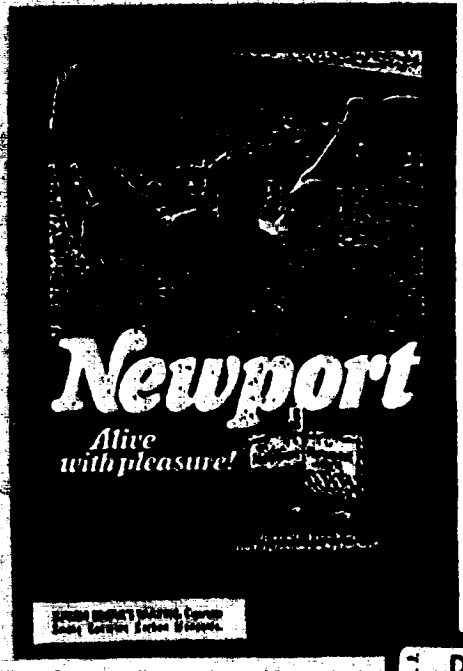
FIGURE 2

THE THREE CIGARETTE ADS THAT SERVED AS EXPERIMENTAL STIMULI



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THE NATION'S NEWSPAPER

USA TODAY

NO. 1 IN THE USA . . . FIRST IN DAILY READERS

FRI./SAT./SUN., JULY 11-13, 1997

By Robert Deutsch, USA TODAY

Hideki Irabu: New York beats Detroit 10-3, 1C

IRABU WINS HIS DEBUT AS A YANKEE

STRIKES OUT 9 TIGERS; BASEBALL, 1,4,6,8,15C

SORENSTAM HITS 6 OVER IN WOMEN'S U.S. OPEN 1,3,15C

Joe Camel dies; victim of his own success

By Christian Thompson
Reuter

Joe Camel, the suave dromedary who excelled at billiards, played the saxophone and tirelessly promoted Camel cigarettes from behind dark glasses, died Thursday at his home in North Carolina. He was 9 years old.

His demise was widely anticipated after years of criticism for his not-too-subtle appeal to children and his recent emergence as a target of the federal government, including President Clinton.

His health had deteriorated rapidly after the June 20 announcement that the tobacco industry would settle a bevy of lawsuits brought by 40 states.

Joe's death came at the hands of his own creator, R.J. Reynolds Tobacco, which acknowledged that the mounting criticism over the years finally made its blink.

"We're not denying that the controversy was not part of the reason" for killing the character off, R.J. Reynolds spokesman Richard Williams said. "It was time to move on."

Immediately after he was born in 1988, Joe's influence on sales of Camel brand cigarettes showed results.

Joe Camel: Deceased

Joe was known to frequent pool halls, dressed in black leather and sunglasses, looking like a tough kid. And of course, he smoked.

Critics applauded his demise. And just hours after his death, before his body was even cold, the Federal Trade Commission asked the company to promise in writing never to bring Joe back.

Joe Camel is survived by his parent, the RJR Nabisco Holdings Corp., and several other tobacco companies and their marketing mascots, among them the Marlboro Man, his chief rival.

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R.J. Reynolds' cartoon icon goes up in smoke

KNIGHT-RIDDER/TRIBUNE NEWS SERVICE

WASHINGTON — Joe Camel, who was born in a French porn magazine and grew up to become an American cigarette-selling icon, died Thursday at the hands of his corporate masters.

"We believe that the time is right for us to move on," said R.J. Reynolds Tobacco Co. spokesman Richard Williams.

He added that the company had sought an equally effective advertising theme for its popular Camel brand — which will continue to be sold in the United States and abroad — ever since Joe Camel became a lightning rod for industry critics.

The cartoon character's death was widely hailed by tobacco control advocates, who accuse the worldly wise beast of luring millions of children into a potentially deadly addiction to nicotine.

"Joe Camel is dead. He had it coming," said Bruce Reed, President Clinton's chief domestic policy adviser.

Clinton, traveling in Poland also

■ See RJR/6A

San Antonio Express-News

RJR kills smokers' best friend Joe Camel

■ Continued from 1A

praised the dromedary's demise.

"I'm glad RJR has finally taken this step today, and I hope other companies will follow suit," he said in a statement. "We must put tobacco ads like Joe Camel out of our children's reach forever."

State leaders who helped reach a nationwide legal settlement with the tobacco industry noted that their proposal includes a total ban on cartoon characters in tobacco ads. They called RJR's move an agreement for quick White House approval of the deal.

"We told them (tobacco firms) that good faith could best be evidenced to us by the death of Joe Camel. And we, today, are forthrightly that that has occurred," said Washington State Attorney General Christine Gregoire, after a White House meeting.

Seeing the $368.5 billion deal could collapse, a Washington moved to slow RJR's announcement much from the firms. Gregoire urged political leaders to "never underestimate the good will."

But anti-tobacco leaders and some independent experts said Reynolds dispatched Joe Camel out of fear not probity.

"Joe's a sacrificial camel," said John Banzhaf, director of Action on Smoking and Health. "I think they're running scared. They know the Federal Trade Commission would ban him anyway."

The FTC has scheduled hearings on its allegation that RJR used Joe Camel to attract underage smokers. Following Thursday's announcement, an FTC statement said the agency would ask RJR to sign an enforceable order banning Joe Camel's return.

FTC spokeswoman Jodie Bernstein recently told a news conference that one study found Camel held less than 3 percent of the under 18 market in 1988.

In 1988, it introduced ads featuring the same sunglasses-wearing camel, first featured in 1974 copies of the French skin magazine Lui. It later pictured Joe Camel chilling out in bars, cooling with his cartoonist buddies and drawing admiring looks from the camels. It sold or gave away posters, camel lost Sandals and other items appealing to teen-agers.

By 1993, the FTC's Bernstein said Camel held 13 percent to 16 percent of the youth market.

The brands soaring popularity drew criticism from groups such as the American Medical Association.

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JAMES TAYLOR

By Bill Flanagan

IT WOULD HARDly be summer without a James Taylor tour. Year after year, Taylor rolls out ahead from New England to California while keeping a low media profile. So it's quite out of character for him to be doing what he's been up to lately: appearing on a slew of talk shows, singing soul songs with Stevie Wonder and Elton John at Sting's rain-forest benefit in New York, inducting Crosby, Stills and Nash into the Rock & Roll Hall of Fame, in Cleveland, and jamming with Jakob Dylan and Sheryl Crow at the VH1 Honors, in Los Angeles.

The shy singer is working so hard because he knows his new album, *Hourglass*, is a world-beater. The *New York Times* has already declared that it "may be his finest album in two decades, and possibly his best ever." Much of the emotional power of *Hourglass* comes from a series of tragedies that Taylor faced while he was writing the songs. In the space of a few years, Taylor lost his older brother, Alex; his father; his father's wife; and Don Grolnick, his bandleader, record producer and best friend. During the same period, Taylor's second marriage, to actress Kathryn Walker (his first was to Carly Simon), ended in divorce after 10 years.

Despite this, *Hourglass* is not a morbid work. Rather, it emphasizes the beauty of the world and the importance of enjoying our fragile passage through it. As he closes in on 50, it seems that James Taylor has reached a new creative peak.

Given the number of deaths that have occurred around you in the last few years, as well as your divorce, one could deduce that suffering is good for your songwriting.

It's very odd, though. The songs aren't laments. They're mostly pretty joyous in one way or another. They seem to move me that way. So maybe you're right – maybe all the stuff that's been going on does make for a stronger connection or a more profound process.

"Enough to Be on Your Way" is about the death of your brother Alex, though you sing about "Alice."

No, it was Alice all along. It actually started before Alex died. When I started the song, I just had the line "The last time I saw Alice, she was leaving Santa Fe." About nine months or so after Alex died, I went to Paris and was walking around the streets there, and the song just came down around the circumstances of Alex's dying. I was there by myself for a long time, walking around by myself in the streets. It was a Paris time, a rainy time. And the song came out of me from alleyways and in cafés.

One of the themes of this record is disbelief – trying to make sense of life without believing in God. In "Up From Your Life," you say, "For an unbeliever like you, there's not much they can do." In "Only," you call yourself a "poor, wretched unbeliever."

Well, I find myself with a strong spiritual need in the past five years, particularly. And, certainly, it's acknowledged as an important part of recovery from addiction. Yet it's hard for me to find an actual handle for it. I'm not saying that it's not helpful to think of having a real handle on the universe, your own personal point of attachment. But, no, I think it's corny. But it's an intensity that keeps it going. You might call a lot of these songs "spirituals for smokers."

Does not having faith in a personal god make it harder to stick with a 12-step recovery program?

Twelve-step programs say an interesting thing: Either you have a god, or you are God and you don't want the job.

You produced a track for your son, Ben. And your daughter, Sally, was playing once a week in Providence, R.I., while she was at college there.

That's right. Sally also works in Massachusetts in a band that will be gearing up again this summer. And Ben, too, is a good player. He plays guitar and writes some nice stuff. I had about five years of playing here and there, trying myself out different ways, before I got a huge amount of unexpected attention when Sally and Ben followed. Five years.

When they go public, they're going to get that right away because of their celebrity parents. It's got Ben feeling a bit guilty.

There's been a lot of attention paid lately to "heroin chic." Kurt Cobain came to represent the ideal of the beautiful, sensitive, strung-out kid. Great. At the time, you accepted that role.

Drug addiction is a thing: There's no question about it. There's nothing about it which is good. If one's addicted, one does that in lieu of living a life. It's dying without dying. And, yeah, it's too bad to be selling that. But I don't know how realistic is Nancy Reagan's suggestion that you just say no. People have always gotten intoxicated. It's deep in the culture. There's also something about death and morbidity that's attractive. This is not new – look at Edith Piaf or Edgar Allan Poe or Truman Capote. There is something about art that does not want to live, that is at odds with life. I would certainly be appalled at the idea that people thought of me as being in favor of people using dangerous drugs, but I don't find myself in a position of saying you can't do it, because it would be hypocritical. Anyway, as bad as heroin is, it's not as deadly as a 1,000-mile interstate from A to a

Raves

Tommy Lee

of Motley Crue

MY SON He'll be a year old [in June], and he's already playing his drums. The guys who build my drums made a tiny version of my kit for him. Isn't that rad?

THE REUNITED MOTLEY CRUE *Tampa, Fla.* It was the first time we all played together in like, oh, dude, six years. There were 65,000 fucking drunk, shirtless guys and girls going crazy. I thought, "Oh, man, I miss this."

BARK AT THE MOON TOUR *Ozzy Osbourne* Our first real tour. One day, Ozzy walks onto our bus and says, "Hello, mates. I'm fucking riding with you." He pulls out the biggest fucking bag of cocaine, and we party like beasts all the way to the next city. We pull into the hotel, and it's this family vacation spot in Dallas. We head to the pool, and some kid has dropped a Popsicle, and there's a trail of ants going up to it. So Ozzy gets on his knees and snorts the line of ants – snorts them up like cocaine.

AMSTERDAM The first time we went there, I was like, "Whoa, you mean everything here is legal?" We were kids in a candy store, going, "Aw, yeah!" Instead of puppies in the windows like a pet shop, there were women. You put a fucking rock & roll band in Amsterdam and you have . . . I don't know, man, you've got a lot of trouble, is what you have.

"ALIVE" *Kiss (Casablanca)* I opened up that album with the double gatefold and saw these fucking freaks and bombs blowing up and a drum set that was bigger than anything I had ever seen. I thought, "Oh, man, I want a drum set that big." It was the beginning of the end.

THE ROCK WALK HALL OF FAME *Los Angeles* Our hand prints are now bumping elbows with a bunch of fucking cool people. All the time, I'm fucking looking up and thanking whoever is up there for where I'm at today. Man, you know what? I love my life.

MOTLEY CRUE have a new CD, *Generation Swine*, and are preparing for a tour.

COMPILED BY ANTHONY BOZZA

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Mizerski 8
7-14-97 RPC

Thursday July 10 2:00 PM EDT

RJR Nabisco Kills Joe Camel Ad Campaign

WINSTON-SALEM, N.C. (Reuter) - The RJ Reynolds Tobacco Co., bowing to pressure from tobacco critics, including President Clinton, said Thursday it will replace its controversial Joe Camel advertising figure when it rolls out a new ad campaign this week.

The tobacco giant's new advertising campaign will appear on billboards nationally beginning and in magazines.

The new ads will feature the traditional trademarked camel that appears on every pack of the company's Camel brand of cigarettes. Joe Camel had been the primary marketing symbol for Camel since 1988.

RJ Reynolds also said it will phase out Joe Camel point-of-sale advertising at retail locations.

The move to pull Joe Camel comes just weeks after RJ Reynolds and other tobacco companies agreed to a $368.5 billion settlement with a coalition of states that are suing cigarette companies to recover the costs of treating smoking-related health problems.

Senior Clinton administration aide Bruce Reed and Health and Human Service Secretary Donna Shalala met Thursday with two of the state attorneys general who brokered the deal.

Afterward Reed said the group was united in a single cause to reduce smoking, especially among children. Wednesday President Clinton said he wanted to see a revision of the section of the deal involving tobacco regulation. The settlement must be approved by Congress and the president.

In nine years as a marketing figure, Joe Camel has been the focus of tobacco critics' ire. They complained that the slick, colorful posters featuring the cartoon-like character appealed to children, encouraging them to take up smoking.

In a press release announcing the change, the company made no mention of the settlement or of other pressure to dump Joe Camel.

"We are taking this new campaign nationally because of the very positive response we have heard from adult smokers who have seen some of the new ads that we have run in selected magazines since March," Fran Creighton, RJR's vice president of marketing for Camel, said in the press release.

A company spokesman did not immediately return phone calls.

The new ads -- featuring the slogan "What You're Looking For" -- were developed in early 1996 and RJR has

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been testing the advertising campaign for the past several months, it said.

The company's move to drop Joe Camel precedes government efforts -- expected in the wake of the tobacco settlement -- to ban the ads.

Help

Previous Story: **Peacekeepers Kill Bosnian Serb Police Chief**
Next Story: **Venezuela Earthquake Leaves 59 Dead**

[**Index** | **News** | **World** | **Biz** | **Tech** | **Politic** | **Sport** | **Scoreboard** | **Entertain** | **Health**]

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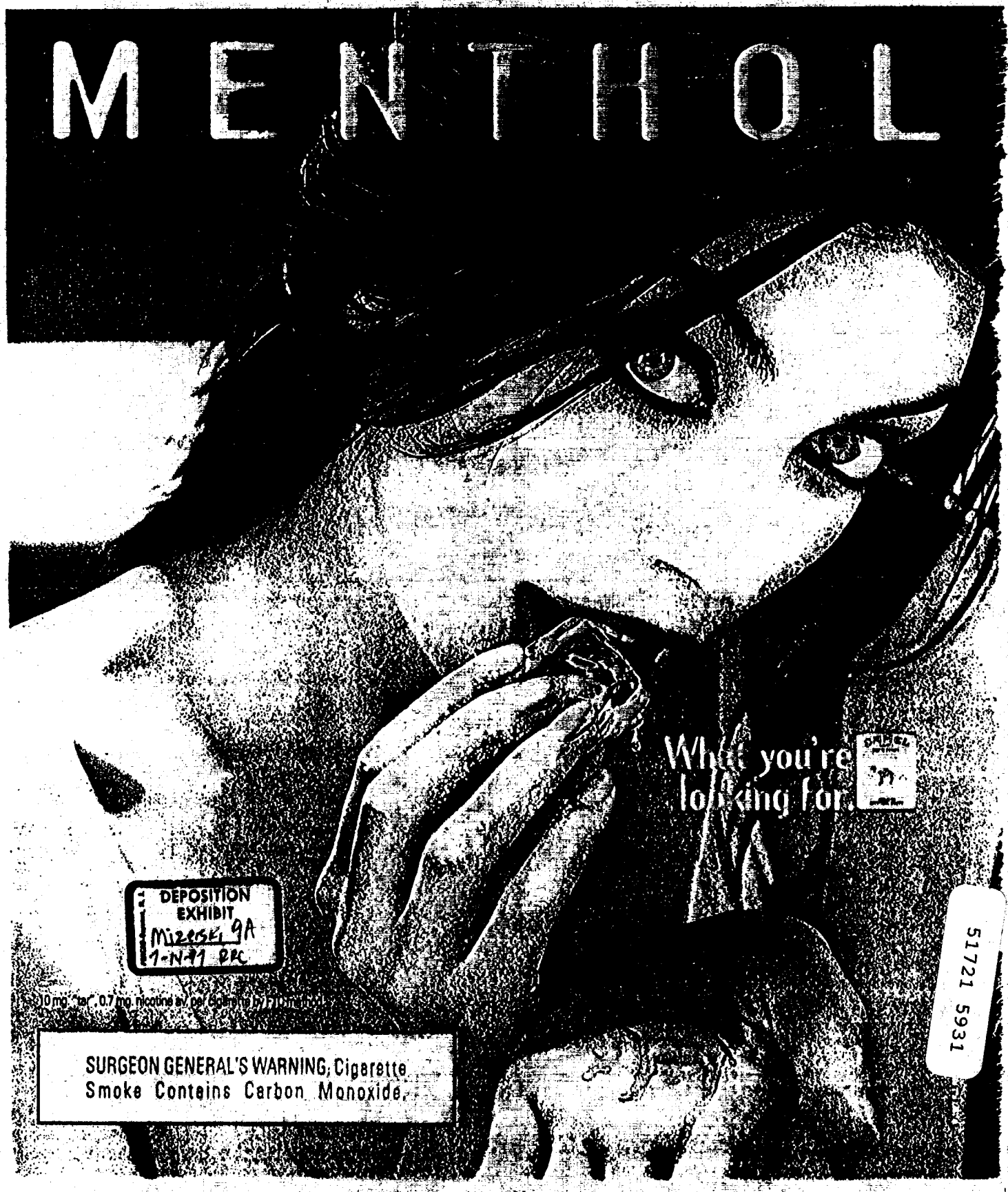

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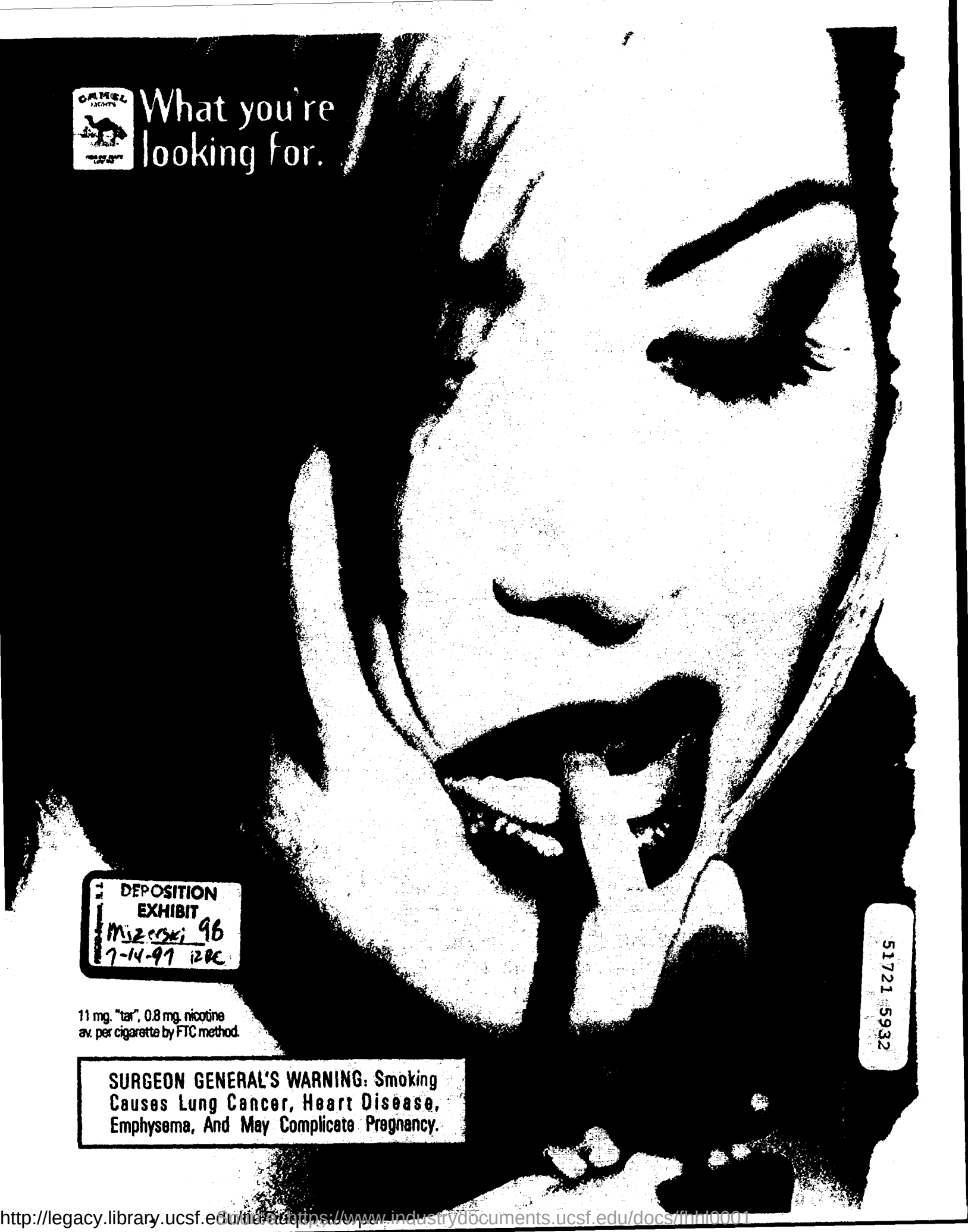

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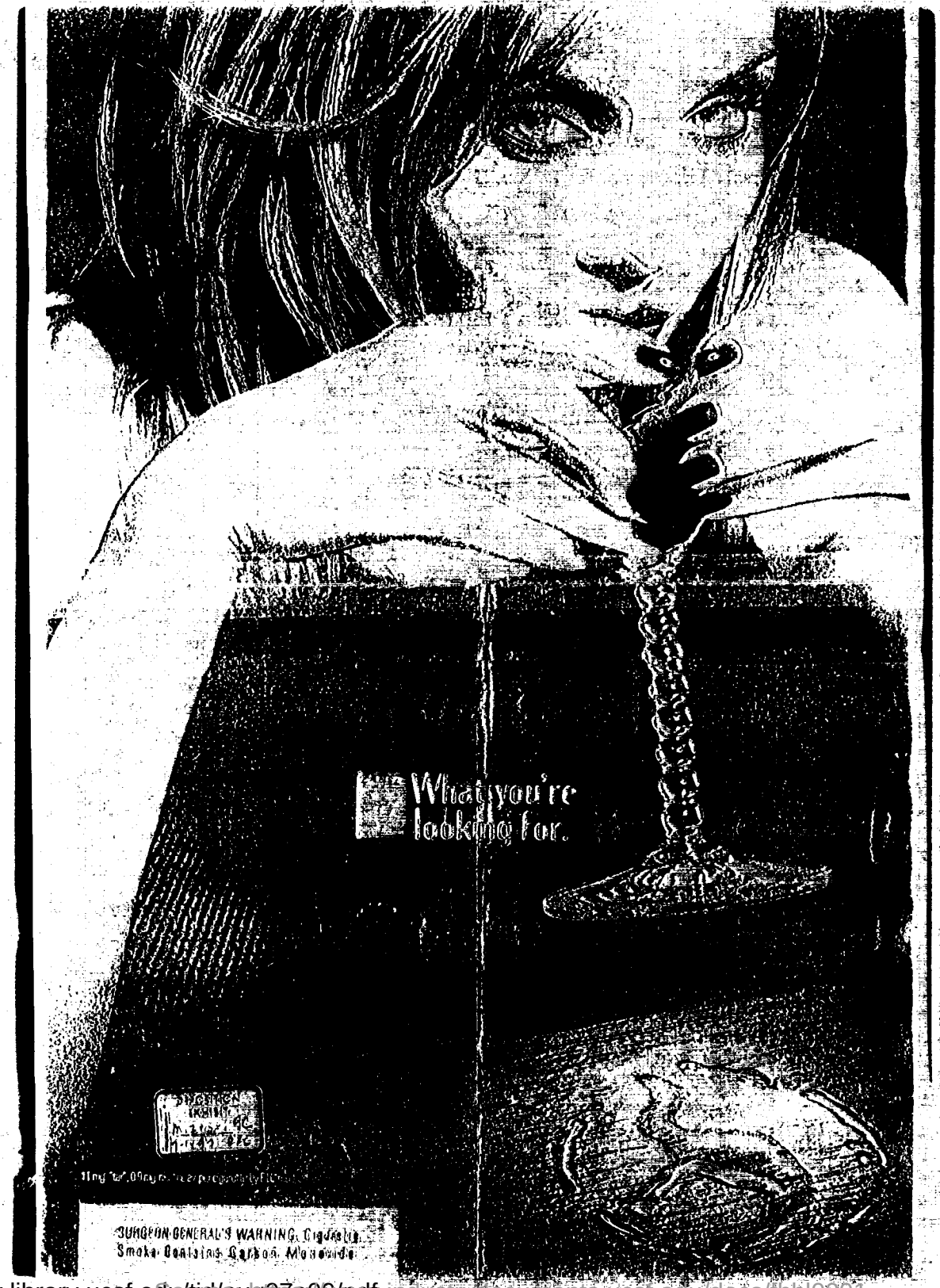

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San Antonio Express-New

Serving South Texas since 1865

FRIDAY, July 11, 1997

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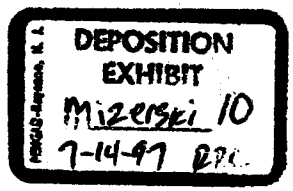

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